

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

In Re:)Chapter 11
)
MARITIME COMMUNICATIONS/)Case No. 11-13463DWH
LAND MOBILE, LLC)
Debtor)
_____)

Deposition of John Reardon

Washington, D.C.

Saturday, November 3, 2012

9:00 a.m.

Job No. 225137

Pages: 1-251

Reported by: Bonnie Russo

Deposition of John Reardon held at:

The Westin Georgetown
2350 M Street, N.W.
Washington, D.C.

Pursuant to agreement, before Bonnie
Russo, Court Reporter and Notary Public in and
for the District of Columbia.

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E X H I B I T S

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(Exhibits included with transcript.)

P R O C E E D I N G S

JOHN REARDON,
was called for examination by counsel and,
after having been duly sworn by the Notary, was
examined and testified as follows:

EXAMINATION BY COUNSEL FOR SKYTEL

BY MR. RUHL:

Q. Mr. Reardon, my name is Danny Ruhl
and I and Mr. Bill Leech here represent Warren
Havens, Skybridge Spectrum Foundation, Verde
Systems, LLC, Environmental, LLC, Intelligent
Transportation and Monitoring, LLC, and
Telesaurus Holdings GB, LLC, who -- that person
or those entities have been collectively
referred to in this bankruptcy case for a while
as SkyTel, and that's how I'm going to refer to
them today. Okay?

We're here to take deposition
pursuant to a notice of 30(b)(6) deposition of
debtor filed in the bankruptcy case of Maritime
Communications/Land Mobile, LLC, Case No.
11-13463 in the United States Bankruptcy Court
for the Northern District of Mississippi. The
notice is filed in the bankruptcy case as
Docket No. 748.

1 I hand you a copy of the notice and
2 ask you to look over that and tell me if you
3 have seen it and are familiar with it.

4 A. Yes, I have seen this one.

5 Q. Okay. The notice requests the
6 debtor to designate a representative to testify
7 on behalf of the debtor in connection with
8 certain matters set forth in Exhibit A to the
9 notice. It's on Page 4 of the notice.

10 I just want to be sure that when you
11 said you were familiar with the notice that it
12 included Exhibit A on Page 4?

13 A. Yes. This is the one for the
14 Rappahannock Electric motion to settle?

15 Q. No. Actually, this notice is for
16 the first amended plan of reorganization and
17 the debtor's motion to sell assets to
18 Rappahannock, and Exhibit A to the notice
19 encompasses matters related to both of those
20 things, the plan or Matters 1 through 6 in
21 general and then the rest are in general
22 related to the motion to sell to Rappahannock.

23 Please look over these matters and
24 let me know -- confirm that you are familiar
25 with them.

1 A. Yes, I am familiar with them.

2 Q. As I was saying before, the notice
3 asks a debtor to designate a representative to
4 testify in connection with the matters on
5 Exhibit A to the notice.

6 Are you the debtor's designated
7 representative for that purpose?

8 A. Yes, I am.

9 Q. The notice also has an Exhibit B,
10 which are documents which the debtor was
11 requested to produce for inspection and copying
12 at the deposition today.

13 Are you familiar with Exhibit B and
14 did you bring with you any documents today that
15 are responsive to that document request?

16 A. I am familiar with Exhibit B, and as
17 I understand it, the documents which the debtor
18 plans to introduce at the planned confirmation
19 are all documents which are already a matter of
20 the public record.

21 Q. So you did not bring any with you
22 today?

23 A. I don't have any additional
24 documents with me today.

25 Q. What about Item 2, documents the

1 debtor intends to use and/or introduce at the
2 hearing on the motion to sell, which is -- I
3 will refer to it as the motion to sell. I'm
4 talking about the Rappahannock motion.

5 A. Yes, sir. The same answer, the
6 debtor intends to use those documents which are
7 already entered into the public domain.

8 Q. When you say "documents entered into
9 the public domain," are you referring to
10 documents that -- are you referring to any
11 documents other than those which have either
12 been filed in this bankruptcy case or produced
13 in the case to SkyTel?

14 A. I am referring to those documents
15 which have been either filed with the parties
16 in the bankruptcy matter or in the case of
17 Rappahannock which may be filed between now and
18 the hearing date relating to the sale of those
19 assets and/or lease of those assets.

20 MR. RUHL: I'm going to go ahead and
21 mark the notice of 30(b)(6) deposition of
22 debtor as Exhibit 1 to the deposition.

23 (Deposition Exhibit No. 1 was marked
24 for identification.)

25 BY MR. RUHL:

1 Q. Mr. Reardon, you were also -- your
2 individual notice -- or deposition was also
3 noticed for today as well as Docket No. 749 of
4 the bankruptcy case. Really that was done in
5 the event that you were not the debtor's
6 designated representative, so unless I say
7 otherwise today, I'm going to be asking you
8 questions in your role as the debtor's
9 representative.

10 Do you understand?

11 A. Yes.

12 MR. GENO: So you know, Danny, we
13 are also going to designate -- when you get it
14 to, John, as an expert witness in the area of
15 spectrum valuation and marketing of spectrum.

16 MR. RUHL: Okay. Can you say those
17 areas again?

18 MR. GENO: Yes. Valuation of FCC
19 spectrum licenses and marketing of FCC spectrum
20 licenses.

21 BY MR. RUHL:

22 Q. Docket No. 750 in the bankruptcy
23 case is another notice of deposition. I'm
24 going to hand you a copy, Mr. Reardon.

25 It is specifically a notice

1 requesting the deposition of -- in connection
2 with, excuse me, the first amended plan of
3 reorganization and the motion to sell to
4 Rappahannock requesting the deposition of any
5 expert witness or witnesses retained by or for
6 the benefit of the debtor or to be retained by
7 or for the benefit of the debtor, is expected
8 to testify on behalf of the debtor at either
9 the planned confirmation hearing or the hearing
10 on the motion to sell to Rappahannock.

11 Have you seen that notice, Mr.
12 Reardon?

13 A. Yes, sir.

14 Q. I understand, based on
15 representations that Mr. Geno, your -- the
16 debtor's counsel just made, that you are here
17 today to be deposed in connection with the
18 debtor's intent to designate you as an expert
19 witness in the areas of FCC spectrum license
20 valuation and marketing of FCC spectrum
21 licenses; is that correct?

22 A. Yes.

23 Q. In that notice, which is Docket No.
24 750 in the bankruptcy case, SkyTel has
25 requested that -- well, first, let me ask you:

1 Are you the only expert that is appearing in
2 connection with this notice of deposition of
3 experts?

4 A. Well, I know Bob Keller is here, but
5 I don't know if he's going to testify as far as
6 valuation or --

7 MR. GENO: He is not.

8 MR. RUHL: Is this your only expert
9 that you are producing in connection with this
10 notice of deposition?

11 MR. GENO: No. Mr. Keller will
12 testify as an expert about FCC communication,
13 FCC law.

14 BY MR. RUHL:

15 Q. In this notice of deposition, Docket
16 No. 750, it asks -- SkyTel requested the
17 production of documents concerning, relating
18 and are pertaining to three areas listed or
19 three categories listed on Page 2 of the
20 notice.

21 Did you bring any of those documents
22 with you today, Mr. Reardon?

23 A. No. I believe the documents that we
24 intend to rely upon are already in the public
25 record or soon will be in the case of my recent

1 transcript of my deposition before the FCC from
2 last month, so those would include, for
3 example, my testimony at trial in the
4 bankruptcy proceeding on more than one occasion
5 relating to the motions to sell the various
6 assets, what we will call the pending
7 transactions, and other statements on the
8 record including a deposition I gave -- I think
9 it was about a year ago maybe in Indiana.

10 Q. You said the documents responsive to
11 the document requests in this notice of
12 deposition as Docket 750 are the transcripts of
13 testimony that you provided in this case either
14 at hearings or in Indiana, I think, in
15 connection with the Rule 2004 exam or the
16 deposition transcript of a deposition you gave
17 to the FCC recently; is that right?

18 A. Yes, sir.

19 Q. When do you expect the deposition
20 transcript for the deposition you gave to the
21 FCC recently to be produced to SkyTel in
22 connection with this notice?

23 A. Well, I believe Bob Keller got it
24 yesterday from the stenographer or -- Bonnie,
25 whatever job you do.

1 Q. The court reporter?

2 A. Court reporter, thank you.

3 And so I need to go through that and
4 make sure that it's accurate, and then I guess
5 the process is then I return it to Bob and then
6 I'm not sure how much time it would take after
7 that, but it shouldn't be that long.

8 Q. I think SkyTel can get it at least
9 several days in advance of the hearing on
10 confirmation of the plan?

11 A. Bob just stepped out, but when he
12 comes back in, we can ask him how long he
13 thinks it will take because the confirmation of
14 the plan is, what, November 14th?

15 Q. Starts November 14th, right.

16 A. Yeah.

17 Q. So the Document Request 1, this
18 notice is any and all opinions that the
19 deponent intends to testify to at the planned
20 confirmation hearing and/or the hearing on the
21 motion to sell and the basis there for, the
22 expert files of the deponents and any expert
23 reports which have been prepared by the
24 deponents.

25 So let me confirm my understanding

1 that the documents that the debtor intends to
2 produce in connection with these three requests
3 are the FCC deposition transcript, that we
4 should get sometime soon after you have a
5 chance to review it and get back to Mr. Keller,
6 and the transcripts of prior testimony in this
7 case that you have given; is that right?

8 A. Yes, and, of course, today's
9 deposition as well as any testimony I give at
10 the actual hearing itself on the motion to
11 sell, which I believe is in December.

12 Q. Okay. So you are being designated
13 today as an expert on those two areas we
14 identified before in connection with the plan
15 confirmation hearing and the motion to sell
16 hearing?

17 A. Yes, and I believe in relation to
18 the motion to sell with the Rappahannock
19 transaction, I believe that that asset purchase
20 agreement refers to and incorporates leases
21 which exist. I believe that those leases have
22 been produced to date, one is the lease with --
23 between MCLM and NRTC, under which NRTC
24 subleases spectrum to Rappahannock. The second
25 lease is a lease from September of 2009, I

1 believe. That also should have been produced
2 already to the parties, but I would include
3 those documents in the -- it's Exhibit A to the
4 asset purchase agreement which is subject to
5 the motion to sell.

6 Q. Do you recall the dates of those
7 NRTC leases or subleases? You said one was
8 from September?

9 A. Well, there is a direct lease from
10 MCLM to Rappahannock for some of the channels
11 involved in the asset purchase agreement and
12 that lease, I believe, is from November -- from
13 September 2009, I believe.

14 Q. Okay.

15 A. As I mentioned, I believe it is
16 already been produced in this proceeding but we
17 would include that as well as -- there is an
18 earlier lease from MCLM to NRTC and NRTC sublet
19 or subleases those channels to Rappahannock, so
20 in the asset purchase agreement, you will see
21 reference to Exhibit A, and that agreement
22 between MCLM and NRTC and then NRTC to
23 Rappahannock, that may be a highly confidential
24 agreement because I believe it involves some of
25 NRTC's other business terms with Rappahannock.

1 Q. The lease of MCLM to NRTC, do you
2 recall the approximate date of that?

3 A. I don't. It predates the direct
4 lease so it would be before 2009, I believe,
5 but I can't remember the exact date of it.

6 Q. Okay.

7 A. It might be available on the FCC's
8 website also, because I believe that sublease
9 would have been filed with the FCC.

10 Q. Okay. So the things you've
11 identified so far, the transcripts you
12 discussed and the leases and/or subleases
13 involving NRTC and/or Rappahannock that you
14 discussed, do those encompass the universe of
15 documents that are responsive to the document
16 requests in the deposition notice that is
17 Docket No. 750?

18 A. I believe so, yes. I would include,
19 you know, all of the earlier purchase
20 agreements which have been reviewed and
21 approved by the court. Those obviously contain
22 the terms of the transactions, purchase price,
23 things like that.

24 Q. The document requests asks for
25 expert files of the deponents.

1 Are there any expert files of the
2 deponents that encompass any documents other
3 than what you have already identified?

4 A. I believe that we produced all the
5 files on a CD already for the FCC purchases, so
6 to the extent that those are already in
7 possession of the parties, I don't believe
8 there are any other documents which could
9 relate to these transactions or valuations.

10 Q. I don't have any CD that has been
11 produced to the FCC and neither does my client.

12 A. Okay.

13 Q. So can I get a copy of that?

14 A. Well, I believe your client may have
15 that CD. The CD in the FCC matter that lists
16 all of the different information like the
17 purchase agreements and all of that
18 information.

19 Q. He didn't get it.

20 A. Okay.

21 Q. When can I get a copy of that since
22 it's part of this document request?

23 A. Well, to the extent that it's
24 relevant to any of these transactions, when Mr.
25 Keller comes back in the room, we can ask him

1 since he has a copy of that.

2 Q. The document request also asks for
3 any expert report or reports which have been
4 prepared by the deponents. Do any reports
5 exist?

6 A. I have not prepared any reports
7 beyond the transcripts of my testimony.

8 Q. Do you intend to prepare any written
9 expert report or reports between now and the
10 hearings?

11 A. I do not.

12 MR. RUHL: I'm going to mark as
13 Exhibit 2 to the deposition the notice of
14 deposition which is Docket No. 750 in the
15 bankruptcy case.

16 (Deposition Exhibit No. 2 was marked
17 for identification.)

18 MR. RUHL: I'm going to mark as
19 Exhibit 3 to the deposition a document dated
20 August 31st, 2012 which is -- which was
21 submitted by SkyTel to Derek Meek on behalf of
22 the committee, which I'm going to refer to as
23 the SkyTel proposal.

24 (Deposition Exhibit No. 3 was marked
25 for identification.)

1 BY MR. RUHL:

2 Q. I'm going to hand you a copy of it,
3 Mr. Reardon, and ask you to take a minute to
4 look over it and let me know if you have seen
5 that before.

6 A. Did you have a question about this?

7 Q. My first question I believe was --
8 well, whatever my first question was. My
9 question now will be: Have you seen that
10 before?

11 A. Yes, I recall seeing this before.

12 MR. GENO: Let me interpose an
13 objection here about any further questions
14 about this.

15 I object to the form of the question
16 for two reasons. One, the court has already
17 heard and considered this and has rejected it
18 out of hand. Two, questions about this or
19 references to this are prohibited by the
20 bankruptcy code because it's soliciting support
21 for a plan or proposal that has not been the
22 subject of an approved disclosure statement.

23 So for those reasons, I'm going to
24 lodge my objection.

25 MR. RUHL: Okay.

1 BY MR. RUHL:

2 Q. When do you recall seeing that for
3 the first time, Mr. Reardon?

4 A. Let's see. I was checking the
5 records on PACER online of what had been filed
6 in the matter and I came across this. It was
7 probably sometime in September.

8 Q. Did the debtor consider what -- I
9 will call this the SkyTel proposal, did the
10 debtor consider the SkyTel proposal in
11 formulating the first amended plan of
12 reorganization that's Docket No. 669?

13 MR. GENO: Same objection.

14 THE WITNESS: Well, in my position
15 working for the debtor, I can answer that when
16 I saw this, I thought it constituted what we
17 call greenmail, which is basically against the
18 FCC's rules. Greenmail is where you lodge a
19 protest of a licensed assignment and in
20 exchange for consideration, you withdraw your
21 protest, and that's against the law, so I
22 viewed this as a -- basically as a greenmail
23 attempt.

24 It also struck me as something which
25 was impossible to achieve and what I mean by

1 that is the proponent in this case, Havens,
2 said that --

3 BY MR. RUHL:

4 Q. I'm going to go ahead and just note
5 for the record -- I don't mean to interrupt
6 you, but let me note for the record that I
7 assume when you say Havens, you are referring
8 to all the entities plus Mr. Havens that I
9 defined earlier as SkyTel?

10 A. That's correct.

11 Q. Okay. Go ahead.

12 A. Havens basically proposes in this
13 plan or this -- if you want to call it a plan,
14 in this document to have the FCC essentially
15 cancel its inquiry or investigation in front of
16 the administrative law judge and the genie is
17 already out of the bottle. It's not possible
18 for Mr. Havens unilaterally, in my view or in
19 the debtor's view, to drop his protests and
20 thereby have the judge, Judge Sippel, simply
21 close the inquiry. So, you know, this plan
22 assumes something which is not possible for Mr.
23 Havens unilaterally to achieve or the Havens'
24 entities unilaterally to achieve.

25 Q. Your testimony that you just gave,

1 is that the extent of the reasons why the
2 debtor rejected this proposal?

3 A. Oh, no. First of all, this does not
4 seem to be a firm, you know, what I would call
5 a serious proposal. It is made to Derek Meek,
6 the committee of unsecured creditors. I wasn't
7 even copied on it. I don't see who else was
8 copied on it. I don't know.

9 But this proposal, from an economic
10 standpoint, would essentially turn all the
11 licenses over to Mr. Havens. He would assign
12 to himself a value of 2 and a half million
13 dollars for his spurious one remaining
14 antitrust claim in New Jersey, and then he
15 would pay off whomever he deems is a valid
16 creditor, so it really hands him the licenses
17 without giving any of the secured parties or
18 the unsecured parties much assurance that they
19 would get paid. So I don't take this as a firm
20 proposal by any means.

21 Q. Other than what you've already said,
22 are there any other reasons why the debtor
23 rejected the proposal -- I'm calling it a
24 proposal. Whatever it is, that's what I'm
25 calling it. Any other reasons why the debtor

1 rejected it?

2 MR. GENO: Object to the form of the
3 question. It calls for a legal conclusion.

4 The debtor has already stated
5 additional legal grounds on the record as to
6 why this expression of interest or plan or
7 whatever it is should not be considered and the
8 court has approved those.

9 BY MR. RUHL:

10 Q. Mr. Reardon, other than what you've
11 said, are there any other reasons why the
12 debtor rejected this proposal?

13 MR. GENO: Same objection. Asked
14 and answered.

15 MR. RUHL: Well, I don't think he
16 answered, but go ahead.

17 THE WITNESS: I remember being in
18 Judge Houston's courtroom. I believe Mr.
19 Havens was there as well, and one of the
20 parties asked Mr. Havens to produce a
21 checkbook, and I heard a lot of hemming and
22 hawing by Mr. Havens, but certainly no
23 checkbook was produced then or thereafter, and
24 so, you know, he has had an opportunity to come
25 with cash. This is not a cash type of offer to

1 the secured creditors or the unsecureds or
2 really anybody, and so from an economic
3 standpoint, this didn't seem to be very
4 attractive at all.

5 BY MR. RUHL:

6 Q. Any other reasons why the debtor
7 rejected the SkyTel proposal?

8 MR. GENO: Same objection.

9 THE WITNESS: Serious concerns about
10 whether Mr. Havens himself qualifies as a
11 licensee. He has created what I would consider
12 to be a bogus nonprofit group called Skybridge,
13 which really has no charitable purpose and only
14 exists to support his for-profit entities.

15 In addition, Skybridge has received
16 by partial assignment many licenses in order to
17 try to avoid construction deadlines, so I
18 believe that sooner or later, the chickens are
19 going to come home to roost and that Skybridge
20 will be found by the IRS and hopefully the FCC
21 not to be a valid nonprofit group which then
22 would result in Mr. Havens lack of character
23 and lack of suitability to be a licensee, so I
24 would be very reluctant to hitch our wagon as
25 the debtor to someone who we believe will be

1 ultimately found to lack character to hold FCC
2 licenses.

3 BY MR. RUHL:

4 Q. Any other reasons why the debtor
5 rejected the proposal?

6 A. How much time do we have? Mr.
7 Havens has --

8 Q. As much time as it requires for you
9 to answer my question.

10 A. Yes. Mr. Havens has never built or
11 operated anything. He has in his exhibit a lot
12 of highfalutin atlas and halo and other types
13 of business plans that he refers to.

14 On Page 10, there are various links
15 to various -- University of California
16 Berkeley, or maybe it's Page 12, proposals of
17 people like Dr. Inde Tripathi and others, but
18 in reality, he has never built anything. He's
19 just simply a spectrum warehouse. He holds
20 spectrum and tries to sell it while using
21 litigation techniques to keep others out.

22 So to the extent that any
23 transaction is going to be, quote-unquote,
24 owner-financed, meaning the debtor will hand
25 the licenses over to someone like Council Tree

1 or Choctaw, who then would need to sell
2 licenses to pay off the debts, Mr. Havens does
3 not have a successful record of building
4 businesses in the debtor's opinion.

5 Q. Anything else?

6 MR. GENO: Same objection.

7 BY MR. RUHL:

8 Q. Are you finished answering my
9 question?

10 MR. GENO: Same objection.

11 THE WITNESS: Mr. Havens claims that
12 his claim in New Jersey is worth \$2.5 million
13 is one remaining count which I don't believe
14 will survive very long. It's for an antitrust
15 conspiracy. It's a pretty silly claim.

16 The fact that he, you know, started
17 off saying it is worth a hundred million
18 dollars and now he is willing to bring it down
19 to 2.5 million and I think for voting purposes,
20 ratcheted it down to a hundred thousand,
21 clearly, I think this proposal or letter from
22 him to Mr. Meek far overstates in Footnote 4
23 the value of his very spurious claim, giving
24 him much more value than it would be worth.

25 BY MR. RUHL:

1 Q. Noting Mr. Geno's continuing
2 objection, anything else?

3 A. Let's see. I think another reason
4 to reject this or -- I don't even know if you
5 would call this a proposal, this letter, is the
6 fact that time is of the essence and we have,
7 as a company or a debtor, we have two valid --
8 what I would view are valid and competing
9 proposals from Council Tree and Choctaw
10 respectively, and so to the extent that, you
11 know, time is money, the debtor views this as a
12 distraction -- this August 31st letter as a
13 distraction and simply an effort to delay the
14 resolution of the bankruptcy in Chapter 11.

15 Q. Anything else?

16 A. That is it.

17 MR. GENO: Same objection.

18 BY MR. RUHL:

19 Q. Let me ask you some follow-up
20 questions related to the testimony you just
21 gave.

22 Are you aware that SkyTel has built
23 public coast licenses in western states?

24 A. I'm not aware of that.

25 Q. Let me ask you this, Mr. Reardon:

1 Is it fair to say that there is no manner in
2 which SkyTel could change its proposal in
3 negotiations with the debtor or creditors or
4 otherwise, in a way that would satisfy the
5 debtor and have the debtor consider it?

6 MR. GENO: Same objection.

7 If you want to make a specific
8 proposal, Danny, we will think about it, but a
9 general --

10 MR. RUHL: I would like him to
11 answer the question.

12 MR. GENO: A general shooting in the
13 dark question like that, I don't think he's
14 capable of answering.

15 MR. RUHL: I'd like him to answer
16 the question.

17 THE WITNESS: Seems pretty
18 hypothetical to me, is there any way that a
19 proposal could be changed to satisfy the
20 debtors is pretty hypothetical. As a matter of
21 public record, that the secured debt and the
22 unsecured debt adds up to around -- I don't
23 know, 18 million of secured debt and maybe
24 another 9 or 10 million of unsecured debt,
25 include the FCC claims and maybe somewhere

1 around 30 million, so, you know, to speculate
2 as to what those different parties would take
3 in terms of a plan, I think it would be easy
4 for me to say, well, if Havens was to produce
5 \$30 million in cash, that certainly would be a
6 favorable amendment to his plan and one which
7 people might be really interested in, so a
8 hypothetical answer, sure, there are probably
9 ways that this plan could be changed and cash
10 could be put on the table that might be of
11 interest to people.

12 BY MR. RUHL:

13 Q. Anything short of SkyTel putting \$30
14 million or some other substantial amount of
15 cash on the table?

16 MR. GENO: Same objection.

17 I'm going to instruct the witness
18 not to answer any more questions about this.
19 You are getting into prohibitions against
20 solicitation for a plan that is not accompanied
21 by an approved disclosure statement, so we're
22 going to cut this off now.

23 MR. RUHL: There is no grounds for
24 you to instruct the witness not to answer
25 unless it's privileged. You have no grounds to

1 instruct him not to answer here, Greg.

2 MR. GENO: You have asked the
3 question. It's irrelevant. I'm instructing
4 him not to answer any further questions.

5 MR. RUHL: You can't do that.

6 MR. LEECH: You can't object on
7 whether it's being irrelevant and instruct him
8 not to answer because you think it's
9 irrelevant.

10 MR. GENO: I've instructed the
11 witness not to answer.

12 Let's move on.

13 MR. LEECH: Well, if we have to come
14 back, the debtor's going to have to pay.

15 MR. GENO: No, the debtor's not
16 going to pay. If you want to call the judge
17 for him to take it up.

18 This is completely irrelevant and,
19 you know, you are bordering on getting some
20 sanctions levied about solicitation of a plan
21 that has not been approved by an -- sponsored
22 by an approved disclosure statement. The judge
23 has already said he is not going to consider it
24 because it's late.

25 We are wasting a lot of time here

1 and the witness has answered the question to
2 the extent that he can.

3 MR. RUHL: I have about two minutes
4 more worth of questions, and I suggest you let
5 me ask them because there is no basis for
6 instructing this witness not to answer these
7 questions. I don't want to come back, you
8 don't want to come back. Let me finish my
9 questions. We're not going to be wasting a lot
10 of time. I'm right here at the end, so let's
11 get around that.

12 MR. GENO: We've wasted 20 minutes
13 so far, and we're not going to go past 4:00
14 today. It's your deposition, but we're not
15 going past 4:00 today.

16 If you want to waste some more time
17 and the witness feels comfortable answering the
18 question, fire away.

19 MR. RUHL: Well, we might not go
20 past 4:00 for the 30(b)(6) of the debtor, but
21 we have two experts you've produced here today,
22 so we can get into that later if we have to.

23 MR. GENO: You are only entitled to
24 seven hours of our time today and that's all
25 we've got, 9:00 a.m., 4:00 p.m..

1 MR. RUHL: Today.

2 I'm entitled to more than seven
3 hours for the experts that you have now
4 designated.

5 MR. GENO: No. Today, you are
6 entitled, 9:00 a.m. --

7 MR. RUHL: Not today. I'm saying
8 before the hearing.

9 MR. GENO: We will see.

10 MR. RUHL: All right.

11 BY MR. RUHL:

12 Q. The question I believe I asked is
13 short of the SkyTel putting some huge amount of
14 cash on the table, is there any way that the --
15 any way that this proposal could be changed in
16 a manner that the debtor would consider working
17 with SkyTel on it?

18 A. As I mentioned earlier, I wouldn't
19 want to speculate an answer or a hypothetical.

20 Q. I'm going to ask you to, and I am
21 entitled to ask you that, so speculate.

22 MR. GENO: You are not entitled to
23 ask him to speculate.

24 BY MR. RUHL:

25 Q. What changes would be acceptable to

1 the debtor?

2 A. I'm not sure.

3 Q. Okay. Are you aware that your
4 counsel in a hearing in front of the court
5 said, quote, the debtor has no interest in
6 being partners with Mr. Havens, end quote?

7 A. Am I aware of that?

8 Q. Yes.

9 A. I don't recall that.

10 Q. You were not at the hearing. I'm
11 asking if you're aware that that was said.

12 A. I was not at the hearing.

13 Q. It was a telephonic hearing.

14 A. I was not aware of that.

15 Q. As the debtor representative, do you
16 agree with that statement that the debtor has
17 no interest in being partners with Mr. Havens?

18 A. Again, I don't know what the time
19 frame or context of that statement was.

20 Q. It was a statement discussing the
21 SkyTel proposal we are talking about.

22 A. Well, first of all, I wouldn't call
23 this a proposal. Second of all, I wouldn't
24 want to answer that question as it relates to
25 just one sentence out of a conversation in

1 which I was not involved.

2 Q. Do you agree that the debtor has no
3 interest in being partners with Mr. Havens in
4 connection with any SkyTel proposal?

5 A. I haven't seen any SkyTel proposal
6 other than this, and as I mentioned at length,
7 the debtor is not interested in this particular
8 letter, to call it that, for many reasons which
9 I enumerated earlier.

10 Q. And we can move past all this if you
11 will answer my question: Do you agree that the
12 debtor has no interest in being partners with
13 SkyTel at all?

14 MR. GENO: Objection. It has been
15 asked and answered three times I've counted.

16 MR. RUHL: It has not been answered
17 one time. It's been asked three times, it just
18 hasn't been answered.

19 MR. GENO: He has answered it the
20 best way he can answer it. It has been asked
21 and answered.

22 BY MR. RUHL:

23 Q. Do you agree with that or not? Yes
24 or no?

25 A. Let me put it to you this way.

1 Since we are in Washington, I won't answer yes
2 or no. Let me give you the best answer I can.

3 Q. Okay. I would appreciate that.

4 A. We sit here in early November, we
5 have two -- what I would call valid proposals
6 for confirmation in two weeks. As I testified
7 earlier, time is money.

8 The SkyTel entities, Mr. Havens has
9 had more than enough opportunity in the
10 debtor's view to put a serious plan together
11 and to be a third bidder, if you will, in
12 addition to Choctaw and Council Tree, so to the
13 extent that that would have happened in the
14 past, it did not happen. Would the debtor have
15 been interested at some point in receiving that
16 type of solicitation? I believe that the
17 answer is yes. The debtor would have been at
18 some point in time, but that is all
19 hypothetical, because here we are and we don't
20 have that, so I'm not sure if I answered your
21 question directly, but I did the best I could.

22 Q. The plan related -- the question
23 related to the plan that has been proposed by
24 the debtor. Are CTI or Choctaw proposing to
25 pay in their -- in the -- I will call them the

1 Choctaw proposal and the CTI proposal. I'm
2 referring to the documents attached to the
3 disclosure statement.

4 A. Yes.

5 Q. Do either the Choctaw proposal or
6 the CTI proposal propose to pay \$30 million in
7 cash or anywhere close to that if the FCC
8 approval is obtained for the licenses that
9 belong to the debtor to be transferred to
10 either of those entities?

11 A. I believe the plans are
12 self-explanatory. They speak for themselves.
13 I believe that both plans contemplate the
14 payment of all of the secured and unsecured
15 debt, which I believe total around 30 million.
16 I think the CTI plan has a cap of around 30 or
17 \$32 million on it.

18 Q. That cash comes after licenses are
19 marketed and sold, right?

20 A. Well, the FCC has to approve any
21 transfer or assignment of licenses, so that is
22 a --

23 Q. Subject to FCC approval, that
24 transfer would come after the licenses are
25 transferred to one of those entities and then

1 sold by them, correct?

2 A. My understanding of the plan is that
3 they would receive the -- either CTI or Choctaw
4 would receive the proceeds from the sale or
5 lease, I guess, of licenses and use those
6 proceeds to pay off the debts.

7 Q. Okay. Neither CTI nor Choctaw
8 coming to the table with cash sufficient to pay
9 off all the creditors absent the sale or lease
10 of licenses and approval by the FCC; is that
11 right?

12 A. As I testified earlier, I believe
13 that both proposals contemplate some type of
14 what we might call owner financing.

15 Q. Tell me what that means.

16 A. Yes. Essentially, as the plans both
17 state, the two entities would sell or lease the
18 spectrum in order to pay off the owner, in this
19 case, the debtor debts, so both have a sort of
20 similar mechanism where they would sell or
21 lease spectrum, use those proceeds to pay off
22 the debts.

23 Q. Last question, and I'm going to move
24 on off of this: Are you aware that under the
25 SkyTel proposal that it involves SkyTel giving

1 up challenges, multiple challenges that are
2 pending with the FCC and in the District Court
3 of New Jersey that might -- if they are given
4 up, expedite this process of paying the
5 creditors?

6 MR. GENO: Object to the form of the
7 question.

8 THE WITNESS: As I testified
9 earlier, I believe that those proposals
10 constitute what we call greenmail, which is
11 kind of a nice way of saying it's blackmail,
12 but you're asking for money, so I believe that
13 those proposals are in effect against the FCC's
14 rules and regulations and so are impossible to
15 achieve, and perhaps illegal.

16 BY MR. RUHL:

17 Q. Considering you think the SkyTel
18 proposal is illegal, perhaps illegal, and that
19 you think that it's only a matter of time
20 before -- I think you said, the chickens come
21 home to roost and SkyTel might be facing
22 character issues at the FCC, considering those
23 things, is it fair to say that there is no
24 proposal SkyTel could put forth that the debtor
25 would consider accepting?

1 MR. GENO: Object to the form of the
2 question.

3 THE WITNESS: I believe I already
4 answered that question as well, that certainly
5 -- hypothetical, there could be situations in
6 which, you know, in the past if Havens or the
7 SkyTel group or whomever had put a serious
8 proposal together, perhaps that would have
9 been, you know, considered closely, but here we
10 are, November 1st, and we don't have that and
11 time is of the essence. November.

12 BY MR. RUHL:

13 Q. Does the debtor feel that -- is the
14 debtor's plan as proposed and if it's
15 confirmed, is it the debtor's position that
16 that will somehow allow the licenses to be
17 transferred to Choctaw or CTI despite the other
18 challenges that are pending in the FCC by
19 SkyTel that involve the licenses? Let me ask a
20 better question.

21 The debtor's plan seems to me to
22 rely on Second Thursday relief being granted,
23 such that in the debtor's position, the
24 licenses could be transferred to Choctaw or
25 CTI. Would you agree with that being an

1 accurate statement?

2 A. That's certainly a key component of
3 the debtor's plan. In addition to that, you
4 may recall, Mr. Ruhl, that there are what we
5 call Footnote 7 exceptions where the FCC itself
6 has said that it may consider outside the scope
7 of the administrative hearing. A grant of
8 several of the -- certainly the Southern
9 California Rail transaction, under what we call
10 Footnote 7 of the hearing designation order, so
11 that some or all of those pending transactions
12 to railroads and utilities may be approved
13 under this Footnote 7 section of the hearing
14 designation order, which would be outside and
15 separate and apart from the Second Thursday,
16 and a number of what we call the critical
17 infrastructure industry buyers have filed with
18 the FCC asking permission to be treated like
19 Metrolink. Metrolink is Southern California
20 regional rail -- to be treated like Metrolink
21 and the FCC has not ruled on that, so while
22 Second Thursday is a critical component of the
23 debtor's plan, it is not the only path forward.

24 If the FCC were to rule upon its
25 Footnote 7 favorably for those buyers, then

1 that could set a precedent also where others
2 who were similarly situated like rails,
3 utilities, might also come in outside of the
4 Second Thursday process and purchase spectrum
5 from the debtor or from Choctaw or CTI or
6 whomever.

7 Q. So under the plan, the debtor thinks
8 that either obtaining Second Thursday relief or
9 obtaining the Footnote 7 to the hearing
10 designation order exception, one and/or both of
11 those things will allow the licenses to be
12 transferred despite the other pending
13 proceedings that SkyTel has involving the
14 licenses at the FCC and in the District Court?

15 A. Certainly, it's up to the FCC to
16 decide that. The debtor hopes that these
17 transactions would be approved by the FCC, but
18 the -- it's ultimately the FCC's decision.

19 Q. So you are saying it's ultimately
20 the FCC's decision whether or not the licenses
21 can be transferred based on Second Thursday or
22 the Footnote 7 exception despite the other
23 pending FCC challenges that Havens has to these
24 licenses? Is that what you are saying?

25 A. Yes, I believe the FCC has

1 jurisdiction over the assignment or transfer of
2 control or ownership of licenses.

3 Q. The second -- the request for Second
4 Thursday relief will be in the context of the
5 show cause hearing, is what I will call it,
6 that is related to the hearing designation
7 order. The Second Thursday decision will be in
8 the context of that show cause hearing, right?

9 A. Well, I'm not exactly sure how the
10 two interplay. I know Bob Keller can answer
11 that better than I can later, but yeah, the
12 Second Thursday application as I believe would
13 simply be an application that would be filed at
14 the FCC to assign the licenses, notwithstanding
15 any challenges to them or any inquiry or
16 whatever, including the hearing designation
17 order and the proceeding in front of the
18 administrative law judge.

19 Q. Are you familiar with the
20 approximately half dozen ongoing challenges in
21 front of the Wireless Telecommunications Bureau
22 that SkyTel has lodged in connection with some
23 or all of the licenses?

24 A. The licenses being the maritime
25 licenses?

1 Q. Yes. When I say licenses today,
2 unless I say otherwise, I will be referring to
3 all of the maritime licenses, that's right.

4 A. I am familiar with probably all of
5 them. I mean, there's so much, it's hard to
6 keep track of, but I try to at least remain
7 familiar with all of the challenges.

8 Q. Are you familiar with the petition
9 that is pending before the full commission
10 which involves challenges to just the
11 geographic licenses of maritime?

12 A. I'm not sure if that -- which one
13 that relates to, if that relates to the
14 auction. If that relates to -- I mean, there
15 are so many petitions and protests. Can you
16 give me a little more information about which
17 petition that is?

18 Q. You -- if there is a petition
19 pending at the FCC that relates to challenges
20 to the maritime licenses, would it be fair to
21 say that you are at least generally familiar
22 with the existence of those?

23 A. Yeah. There are so many challenges
24 by Mr. Havens. I mean, everything that is
25 filed or done at the FCC, so, you know, I am

1 generally familiar with those matters, but Curt
2 Brown is the company's FCC counsel is more
3 intimately familiar and Bob Keller, of course.

4 Q. What about -- are you aware that in
5 the -- if SkyTel were to prevail on its
6 antitrust claim in New Jersey, that one of the
7 potentially applicable remedies available to
8 the District Court under the Communication Act,
9 Section 313, is revocation of the maritime
10 licenses?

11 A. I have heard that that section of
12 the act exists. I'm not sure if that has ever
13 been applied before.

14 Q. Is it the debtor's position today
15 that going forward and getting Second Thursday
16 relief and/or obtaining the Footnote 7
17 exception to the hearing designation order,
18 could clear all of these things we just talked
19 about, these challenges to the licenses, could
20 clear them out of the way so that the licenses
21 could be transferred to Choctaw or CTI?

22 A. I believe that the FCC decision on
23 whether it is Second Thursday and/or the
24 Footnote 7 may resolve some or all of the
25 FCC-related matters. How that would interplay

1 with the action in front of the New Jersey
2 court, the one antitrust claim, I'm not clear
3 because I believe that the -- that court has
4 its own jurisdiction, of course, and the FCC
5 controls licenses. That court is looking into
6 the antitrust claims.

7 So to answer the question, I believe
8 that any Second Thursday grant or any Footnote
9 7 grant would relate to FCC matters within its
10 jurisdiction, but probably would not relate
11 directly to the New Jersey court jurisdiction.

12 Q. Did the debtor receive any feedback
13 from the creditors in connection with the
14 SkyTel proposal?

15 A. I think I've answered --

16 Q. I'm asking if you got any feedback
17 or had any discussions with any of the
18 creditors about it?

19 A. Oh, well, let's see. Yes.

20 Q. Can you tell me about those?

21 A. Well, sure. Without violating any
22 NDAs or anything, because I believe there is
23 one in place with both Choctaw and with Council
24 Tree, I received some feedback from the Choctaw
25 folks that, you know, this didn't seem to be a

1 firm -- what I would call a firm plan.

2 I also am an unsecured creditor
3 myself, so I gave myself some feedback saying,
4 this didn't look like this was something that
5 was going to be feasible, to be polite. I
6 believe I spoke with Mr. Meek briefly about
7 this in September and he expressed a similar
8 view. I'm trying to think if we talked to
9 anybody else about this.

10 Q. Did Mr. Meek give any specific
11 reasons?

12 A. Not that I recall.

13 Q. Anything else you haven't told me
14 about that question?

15 A. I think the question was did any
16 creditors have any opinions on this?

17 Q. Right.

18 A. Was that the question?

19 I believe I spoke with Tim Smith who
20 is an unsecured creditor and he had views
21 similar to mine. I'm trying to think if there
22 is anybody else.

23 As I said, I wasn't served directly
24 with a copy of this and so I sort of found out
25 about it through my own -- my own looking

1 through the filings, so that's probably about
2 it. That's all I can recall right now.

3 Q. Does the debtor in its plan, which
4 seems to rely on either Second Thursday or
5 relief from the Footnote 7 exception, which is
6 what I'll call it.

7 You understand what I mean when I
8 say that, right, the Footnote 7 exception?

9 A. Yes, sir.

10 Q. Does the debtor have any reason to
11 believe that if its plan goes forward and
12 Second Thursday relief is obtained and/or
13 Footnote 7 exception, does it have any reason
14 to believe that SkyTel wouldn't be allowed to
15 appeal those decisions?

16 A. You mean to appeal?

17 Q. To the FCC and/or to the District
18 Court?

19 A. Just when you say the "decision," do
20 you mean the Second Thursday decision and/or
21 Footnote 7 decision?

22 Q. That's right.

23 A. Well, sure. I believe that, you
24 know, both or either one of those decisions
25 would be decisions probably of the full

1 commission, which I believe could be appealed
2 to the court in D.C..

3 Q. All right, thanks, Mr. Reardon. Can
4 I get that back? I'm done asking you about
5 that document, which I'm sure Mr. Geno will be
6 thrilled to know.

7 As I appreciate it and as I think
8 we've discussed at least in part, the plan
9 seems to provide for -- or contemplate getting
10 Second Thursday relief and/or Footnote 7
11 exception relief, and subject to getting that
12 and/or any other FCC approvals that might be
13 required, transferring the licenses to either
14 Choctaw or CTI so that they can then close the
15 approved APAs and market and sell the rest of
16 the licenses in an effort to pay off creditors.
17 Is that an accurate kind of summary of the
18 basic components of the plan?

19 A. My understanding of the plan is yes,
20 that either Choctaw and/or Council Tree would
21 attempt to receive FCC approval. As you've
22 mentioned, close the pending transactions,
23 which have been approved by the bankruptcy
24 court and sell and/or lease sufficient licenses
25 to pay off the debt or perhaps, you know,

1 deploy the spectrum in other ways, you know,
2 for example, bring in enough money through
3 operations, partnerships, that type of thing,
4 to pay off the debt.

5 Q. And what would happen to any
6 licenses left over after the -- that haven't
7 been sold, leased or otherwise disposed of
8 after the debt has been paid off?

9 A. What would happen to any licenses
10 that had not -- that remained?

11 Q. Yes.

12 A. Well, you know, I believe that both
13 plans contemplate ownership of the license. I
14 think the Choctaw plan contemplates ownership
15 in a holdings entity, and Council Tree I
16 believe would form a company called Council
17 Tree Maritime maybe, so I believe that both of
18 those companies would be -- under their
19 respective plans, would hold the licenses so to
20 the extent that, you know, again, this is
21 hypothetical, but to the extent that there may
22 be additional licenses after the debts are paid
23 and after all, you know, the debts would
24 include, of course, cost of operations, taxes,
25 you know, so it would be more than I think just

1 the debt. I think both plans contemplate
2 payment of taxes. There would be ad valorem
3 taxes, for example, so after all of that is
4 paid, to the extent that there may be extra
5 licenses or licenses left over, then I believe
6 both plans contemplate that the entity that
7 holds the license, Choctaw Holdings or CTI
8 Maritime would then remain the holder of those
9 licenses.

10 Q. If you can, explain to me why
11 Choctaw or CTI -- what is the benefit of having
12 either of them involved? Why wouldn't it be
13 better, more feasible, whatever, for the debtor
14 to just go seek Second Thursday relief and/or
15 any other FCC approvals they need to move
16 forward with marketing and selling the
17 licenses, closing the APAs and paying off the
18 debt?

19 A. Well, the debtor doesn't have any
20 money. Prior to filing Chapter 11, I and the
21 other employees, we were not paid for about
22 three months so we couldn't even make our
23 payroll. I think the schedules that we filed
24 show that maybe in January, we had about \$9,000
25 in the bank account so the debtor -- we don't

1 have any money, so to do it alone would be -- I
2 would say impossible or very, very difficult.

3 So, therefore, it's necessary to
4 have someone to come in and be willing to pay
5 debtor and possession financing, pay the costs
6 of operating the business, site rent,
7 utilities, things like that, marketing costs,
8 and actually then to go and, you know, build a
9 business plan around that, whether it's selling
10 enough licenses to pay off debt or leasing
11 licenses or entering into partnerships or
12 whatever it is that Choctaw and Council Tree
13 would do.

14 Q. Has Choctaw or Council Tree
15 committed to financing, funding, however you
16 want to call it, financing or funding the
17 process of marketing and selling these licenses
18 or can they walk away at any time?

19 A. Well, my understanding of the plans
20 is that -- I believe Council Tree would fund I
21 believe about six months' worth of what we
22 might call monthly expenses, and I believe that
23 -- and I know that Choctaw also has what they
24 call monthly accrual of -- I think accrual was
25 -- is my Pittsburgh accent, a monthly accrual

1 of about \$90,000, so I believe both of those
2 plans contemplate paying for operations and
3 sufficient money to employ people such as
4 myself to market and sell the licenses and/or
5 find partners and build opportunities to bring
6 in revenue.

7 Q. Under the terms of the plan, though,
8 either -- isn't it right that Choctaw or CTI --
9 I call it Council Tree Investments, CTI?

10 A. Sure.

11 Q. That either Choctaw or CTI in their
12 sole and absolute discretion can walk away from
13 the process either before Second Thursday is
14 obtained or even if it's obtained afterwards at
15 any time they want to?

16 A. I guess the plans speak for
17 themselves. I don't have them in front of me
18 here, but they may contain language that says
19 they can -- you know, in their sole discretion
20 decide not to go forward.

21 Q. I might ask you about that more
22 later, but in the meantime, here is a copy of
23 the plan.

24 A. Thank you.

25 Q. You mentioned your employment with

1 Choctaw and/or CTI. I think it may just be
2 with Choctaw.

3 Can you tell me about that? Is that
4 contemplated that you'd be employed by one or
5 both of those entities?

6 A. Yes. Well, first of all, I would --
7 as a general matter, I would like to remain
8 employed, you know, because I'm an unsecured
9 creditor, so with my unsecured creditor hat on,
10 I would like to continue to remain and both get
11 my own claim paid through the sale and/or lease
12 and management of the spectrum going forward,
13 and, of course, to continue to draw a salary in
14 some role because this is my livelihood, so I'm
15 in a little different position than most of the
16 unsecured creditors and the secured creditors,
17 because this is my job. It has been for a
18 while.

19 I have an agreement with Choctaw in
20 which I would -- if they were to receive the
21 licenses from the FCC, I would be employed by
22 them in a similar general manager-type role,
23 similar salary, keep my office and continue to
24 sell and market and hopefully deploy the
25 spectrum going forward. I know that in their

1 plan, Council Tree has also indicated that if
2 they were to receive the licenses that they may
3 be interested in employing me, I don't have any
4 written agreement to that effect, but
5 certainly, they are professional and capable of
6 employing their own folks, too, so I'm under no
7 illusions that I'm the only guy in town that
8 can do this but certainly, you know, that would
9 also be something I hope they'd consider as
10 well, if they are the successful buyer.

11 Q. Under your written agreement with
12 Choctaw, what would be the length of your
13 agreed-upon employment?

14 A. Well, I know that I have a
15 nondisclosure agreement with Choctaw. I'm just
16 trying to think because I individually entered
17 that agreement, so I'm not real comfortable
18 talking about the details of it especially with
19 Mr. Havens on the phone, so, you know, suffice
20 it to say I have a similar type of agreement
21 with Choctaw as the one that has been filed
22 with the court under which I'm working for
23 Maritime.

24 Q. So you say your current agreement
25 has been filed with the court?

1 A. Well, I think the most recent one
2 was filed. Certainly, the Choctaw -- I'm
3 sorry, the Council Tree folks I believe filed
4 copies of all my employment agreements as part
5 of their plan, and I think that it's been filed
6 previously with the court, too, if memory
7 serves me right.

8 Q. Back to my question about why the
9 debtor doesn't just go forward and try to get
10 Second Thursday relief without involving
11 someone else, like Choctaw or CTI.

12 I believe you said that the primary
13 reason was you need someone to fund the
14 process. The bankruptcy court has approved
15 multiple asset purchase agreements to date; is
16 that right?

17 A. Yes.

18 Q. Which I know you don't have them in
19 front of you but it's in the CTI proposal, they
20 did a little chart. I think that they listed
21 the figure -- I didn't give it to you. I have
22 it over here if you need it later, but I think
23 they summarized the approved asset purchase
24 agreements and came to the conclusion that the
25 net sell proceeds, if all those closed,

1 somewhere around 9, 10, \$11 million; does that
2 sound right?

3 A. I believe that's right. I would say
4 about \$10 million.

5 Q. And those would be ready to be --
6 you know, the debtor's intent or Choctaw's or
7 CTI's intent under this plan would be to close
8 those deals as soon as they get FCC approval to
9 do so, right?

10 A. I believe that is correct. I think
11 both plans. Again, both plans speak for
12 themselves, so if I am at odds with what's in
13 either plan, I apologize, but both plans
14 contemplate that the FCC would approve those
15 \$10 million roughly of pending transactions,
16 yes.

17 Q. Wouldn't that provide sufficient
18 operating capital, if you will, for the debtor
19 to move forward with the marketing and sale
20 process after it obtained Second Thursday day
21 relief or Footnote 7 exception relief, I'll
22 call it, as opposed to having to involve
23 Choctaw or CTI?

24 A. Well, we have a short term problem
25 of no cash. We have a medium term problem of

1 any sale that would close as Mr. Havens has
2 mentioned in Exhibit 3, he intends to fight for
3 the next four or five years and all of these
4 agreements or almost all of them have what we
5 call final order provisions, where parties
6 don't have to pay a dime until there is a final
7 order, so the original --

8 (Interruption.)

9 MR. RUHL: Who just joined the
10 meeting?

11 MR. GLASS: Jonathan Glass.

12 THE WITNESS: As Mr. Havens pointed
13 out, the asset purchase agreements which are
14 publicly filed, most or all of them have a
15 final order provision whereby the buyers don't
16 have to pay a dime until they receive final
17 order, which means it's unappealable, and it's
18 final, so the original, initial approval of the
19 FCC of any of these \$10 million in transactions
20 or certainly the majority of these, there may
21 be an exception here, would mean that the money
22 would not flow because Mr. Havens would -- as
23 he has stated very clearly, continue to oppose
24 this.

25 So that is sort of what I would call

1 the medium term cash problem, so to answer your
2 question, I don't think that the debtor could
3 go it alone because we don't have money now, we
4 wouldn't get money in the medium term, and then
5 over the longer term, to deploy the licenses
6 would require additional capital, to sell and
7 market the licenses would require additional
8 capital, payment of salaries, marketing
9 expenses, travel, that sort of thing, and also
10 the licenses require capital in the case of
11 incumbent licenses in particular to maintain
12 operations and certainly to avoid any hint that
13 these licenses would not be kept in the regular
14 course.

15 Q. When you say incumbent-based
16 licenses, is that what I think of when I say
17 site-based licenses?

18 A. Yeah, that's right. The FCC rules
19 provide basically that as long as you don't
20 abandon your licenses, you know, then there is
21 no requirement for keeping them, you know, what
22 you might call loaded with customers. But in
23 the scenario that you asked about, the
24 hypothetical, why doesn't the debtor go it
25 alone, the debtor doesn't have money in the

1 short term to operate, in the medium term, it
2 would not get money from asset purchase
3 agreements, and then I believe it would be a --
4 sort of over the long term, it would be a
5 downward spiral where we would not be able to
6 continue to operate a company, and so that then
7 could lead to the charge that the debtor had in
8 effect at that point somewhere down the road
9 maybe even abandoned the licenses where we
10 don't have that situation today because we have
11 money coming in, and the loan, we are able to
12 actively market the licenses as evidenced by
13 the recent Rappahannock sale, and we clearly
14 have not in any sense abandoned any licenses.

15 Q. Talking about the debtor's cash flow
16 problems that you are discussing, are there
17 site-based license stations in operation now
18 with customers and equipment and services to
19 customers, that the debtor is generating or has
20 the ability to generate income off of?

21 A. Well, let's see. Can you ask the
22 question again? That was a long one.

23 Q. Are there any debtor site-based
24 licenses that are in operation now with
25 customers that would enable the debtor to

1 generate income?

2 A. Let's see. I believe that we have
3 filed all this information with the FCC
4 relating to the site-based licenses, what
5 operations we have on those. Most of the -- in
6 fact, I believe all of the leases from which we
7 generate revenue have been prepaid, so that we
8 don't activity receive on a monthly basis from
9 leasing a significant amount of money.

10 Dixie Electric, I believe, was the
11 last lease that paid, you know, maybe it was
12 ten or 13,000 in a month or whatever, for the
13 first six or nine months of the deal, and I
14 believe that that money ran out maybe six or
15 nine months ago, so that they're no longer
16 required to pay that to the company.

17 So the -- this is all a matter of
18 public record but I believe it's clear that we
19 don't have revenue coming in to match the costs
20 of operations, which is why we need a DIP loan
21 of about \$50,000 a month.

22 Q. Are there any -- you said under the
23 leases that exist, most or all of them were
24 prepaid. Are there any coming due where -- let
25 me ask it this way.

1 Does the debtor expect any
2 significant additional payments on any of its
3 leases anytime in the next six to 12 months?

4 A. I would say no, not significant. I
5 mean, we have a number of leases in place where
6 it's a dollar a year type thing and that is all
7 public record, where we sell the license and
8 they lease in the interim, but significant
9 revenue, I don't anticipate in the next 12
10 months any significant additional lease revenue
11 from those existing leases because they have
12 all been prepaid, the significant ones.

13 Q. So we don't disagree on what
14 significant is, can you give me your definition
15 of what you are talking about when you say
16 significant?

17 A. Well, I mentioned Dixie Electric,
18 for example. I believe -- again, this is
19 public record, but it was somewhere around 6 or
20 \$9,000 a month of revenue that was paid under
21 the asset purchase agreement in which they also
22 leased a spectrum, so, you know, that seemed to
23 be significant from that lease.

24 Then in the case of other, you know,
25 other leases that have been publicly filed, the

1 amounts of payment were higher than that.

2 Q. You mentioned the DIP financing, DIP
3 loan of about \$50,000 a month. Why wouldn't
4 continuing that loan enable the debtor itself
5 to go seek Second Thursday or the Footnote 7
6 exception without involving these other
7 entities?

8 A. That's a good question. The monthly
9 accrual that's contemplated in the Choctaw plan
10 is \$90,000 a month, and their actual burn rate
11 of the company including paying folks like
12 Crown Castle, Tower Company, it's a lot closer
13 to \$90,000 a month, so we have fallen behind in
14 the ability to pay some of our tower leases,
15 utilities and the like, so on an ongoing basis,
16 in order to fully protect the licenses and
17 operate the way that we need to operate from a
18 company perspective, you know, paying cell
19 phones and traveling and that sort of thing,
20 really the burn rate is closer to \$90,000 a
21 month than 50,000 so 50,000 won't really get us
22 all the way there as a medium term solution.

23 Q. Did the debtor try to attempt to
24 obtain continued financing of the 90,000 a
25 month so it could seek Second Thursday as

1 opposed to getting these other entities
2 involved?

3 A. My last understanding from talking
4 with Sandra DePriest, because I brought to her
5 attention two weeks ago that we owe Crown
6 Castle some money for a few sites, I think four
7 sites, was that we are not able to increase the
8 DIP loan that -- the \$50,000 was all that the
9 DIP lender was interested in doing at this
10 point. That was my conversation with Sandra
11 DePriest.

12 Q. The DIP lender is Southeastern
13 Commercial Finance, right?

14 A. I believe that is correct.

15 Q. Is Patrick Trammel still the
16 president of Southeastern Commercial?

17 A. I'm not sure.

18 Q. He is involved with them, though,
19 right?

20 A. I believe that's right, yeah.

21 Q. He is also involved in Choctaw; is
22 that right?

23 A. Yes. Yes.

24 Q. Is the DIP loan coming due anytime
25 soon?

1 A. I don't know. I believe under both
2 plans, the DIP loan would be, you know, both --
3 when I say both plans, Council Tree and the
4 Choctaw, the DIP loan would be accounted for
5 under both of those plans.

6 Q. You mentioned that you thought that
7 because the asset purchase agreements -- at
8 least most of them if not all of them, don't
9 have to close until there is a final order. Is
10 that -- that's what you said, right?

11 A. My understanding of the majority of
12 the asset purchase agreements is that the buyer
13 does not have to close the transaction until
14 there is an assignment of the license by what
15 is called a final order in the majority of
16 cases.

17 Q. Now -- and SkyTel appeals will hold
18 up those orders becoming final; is that right?

19 MR. GENO: Object to the form of the
20 question. Calls for a legal conclusion.

21 If you know, John, you can answer.

22 THE WITNESS: I believe as SkyTel
23 said in Exhibit 3 and as I testified earlier,
24 that SkyTel plans to continue to appeal and
25 protest any assignment or grant that doesn't

1 involve its ownership of the licenses, and so I
2 believe that under the final order definition
3 of the majority of these contracts, an FCC
4 assignment which is appealed is not a final
5 order until it's nonappealable.

6 BY MR. RUHL:

7 Q. Now, so why isn't the SkyTel
8 proposal better since it contemplate a
9 three-way settlement between MCLM, SkyTel and
10 FCC of all pending matters including the
11 District Court action of New Jersey?

12 MR. GENO: Object to the form of the
13 question for reasons already stated.

14 THE WITNESS: Yes, as I testified
15 earlier, the SkyTel plan isn't really a
16 proposal of plan. It's just a letter, so it
17 wasn't viewed as a formal proposal in any
18 sense, and as I went into great length to
19 elaborate earlier, I believe that the SkyTel
20 proposal would not be permitted under the FCC's
21 own greenmail rules and certainly for a number
22 of other reasons was not viewed as a
23 significant proposal.

24 BY MR. RUHL:

25 Q. Could the debtor or why can't the

1 debtor enter into leases of its other spectrum
2 in order to try to fund a Second Thursday
3 process involving Choctaw or CTI?

4 A. I don't understand the question.

5 Q. There are -- the debtor has licenses
6 that are not tied up in asset purchase
7 agreements, correct?

8 A. Correct.

9 Q. Why couldn't the debtor try to lease
10 some of those in order to fund the debtor
11 moving forward itself for Second Thursday
12 without Choctaw or CTI being involved?

13 A. Well, first of all, it's very
14 difficult to enter into a lease while in
15 Chapter 11 because most lessees would need to
16 buy equipment and deploy systems which are more
17 expensive generally than the cost of leasing or
18 buying the spectrum.

19 So for example, a railroad would
20 need to buy a lot of equipment and deploy it
21 over a number of years, and so leases are
22 generally ten-year commitments. In fact, you
23 know, I think it's -- five years may be the
24 shortest term that most folks want, so it's
25 very difficult if not impossible to lease

1 spectrum while in Chapter 11 and while the
2 status of the company is so uncertain, because
3 anybody that is going to lease the spectrum is
4 going to need to buy equipment to operate on
5 that spectrum and normally, the equipment could
6 not then be used on other spectrum bands, so
7 they're making a really large capital
8 investment in equipment and systems, hiring
9 engineers and deploying it, so it is really
10 something that they need -- you know, as a
11 lessor, a lessee, you would need some really
12 significant certainty that the lease would be
13 continuing for a number of years, so there is a
14 lot of uncertainty out there.

15 Can we take a break in a couple of
16 minutes?

17 MR. RUHL: I'm happy to let you take
18 all the breaks you want, except I'm on a
19 deadline at 4:00. We will take a short break.

20 (Short break.)

21 MR. RUHL: Back on the record.

22 BY MR. RUHL:

23 Q. A preliminary matter before we get
24 started back on the questions.

25 Mr. Reardon, earlier you identified

1 certain documents that were responsive that
2 fall under the document request that were in
3 the expert notice of deposition, Docket No. 750
4 in the bankruptcy case.

5 You said that included within those
6 documents, insofar as the expert opinion that
7 the debtor intends to designate you for,
8 included in those documents were a CD that was
9 recently produced to the FCC and a transcript
10 of a deposition that you recently -- was
11 recently taken of you in the FCC matter, and
12 you had said that -- Mr. Keller was out of the
13 room at the time when we were talking about it
14 and you had indicated that we would have to ask
15 him when we could get that CD that's responsive
16 to our document request and when we can get the
17 FCC deposition transcript.

18 So I want to -- since Mr. Keller is
19 now in the room, let's talk about that.

20 MR. RUHL: When can we get those
21 documents?

22 MR. KELLER: You are asking me?

23 MR. RUHL: Well, I asked Mr. Reardon
24 earlier and he said we'd have to ask you, so
25 yes, I'm asking you.

1 THE WITNESS: I don't know the time
2 frame, Bob --

3 MR. KELLER: Well, first of all, we
4 do not have the transcript and I don't know if
5 we are going to get it soon because I'm waiting
6 on the response from the court reporter about
7 whether it's been provided to the FCC.

8 They have sent us a letter stating
9 it's available for John to go to their office
10 and review, because we didn't waive reading and
11 signing. I have instructed the court reporter,
12 if it has not yet been sent to the FCC, I want
13 them to hold off on doing that because it's
14 going to be subject to confidentiality, at
15 least portion -- some or all of it is going to
16 be subject to confidentiality under the
17 protective order in the FCC proceeding, and we
18 are not going to be providing any more
19 information to the FCC under the protective
20 order until the pending FOIA matter is
21 resolved.

22 That would apply to the disk as
23 well. We are not going to -- I don't know the
24 answer about what it means for me to provide
25 you a copy of that disk because -- well, it has

1 been produced to the FCC. It is subject to
2 protective order, and I will have to get the
3 bankruptcy counsel and you to discuss what the
4 relationship is between the bankruptcy order --
5 the FCC protective order in the bankruptcy
6 case, but assuming it's kosher in that regard,
7 then the disk -- I suppose we could provide
8 subject to whatever rules apply about that.

9 THE WITNESS: You had e-mailed me
10 yesterday something that I didn't have a chance
11 to look at so I guess it was a letter or
12 something.

13 MR. KELLER: I was just letting you
14 know the transcript was available for review
15 and I'm not taking a copy of it and -- unless
16 it has already been given to the FCC, I'm
17 asking that a copy not be provided until we
18 resolve this FOIA dispute.

19 MR. RUHL: I heard everything you
20 just said and I appreciate it. Now I guess I
21 will ask Mr. Reardon and Mr. Geno since the
22 witness has identified those two things as
23 responsive and relevant to the document request
24 in our notice of deposition of debtor's experts
25 for the planned confirmation hearing in or

1 around the Rappahannock sell motion hearing.

2 When -- as you know, there has been
3 protective orders in this case. We are fine
4 with whatever protective order makes you all
5 happen, but when and how can we get those
6 things so we can adequately prepare for the
7 confirmation hearing and the expert testimony
8 we anticipate that you will at least try to put
9 on, because I think what I'm hearing Mr. Keller
10 say, I might be mishearing, I think I'm hearing
11 him say, we might not be able to get it. So...

12 THE WITNESS: Maybe the CD is not
13 relevant to the extent that it only discusses
14 construction and that sort of thing. Maybe
15 it's not relevant in this one.

16 MR. KELLER: Whether or not it's
17 relevant -- what I'm saying about the CD, since
18 that has already been produced to the FCC and
19 we have it, is that is just going to be subject
20 to whatever -- I don't know, maybe you know
21 better than I, I don't know what relationship
22 there is between the FCC protective order and
23 the bankruptcy, but subject to compliance with
24 the FCC protective order and assuring
25 compliance with the FCC protective order, I

1 would be willing to allow that to be produced.

2 MR. RUHL: Maybe we can just do it
3 under the terms of law in the bankruptcy
4 protective order that say, the FCC protective
5 order applies except that the information can
6 be used in the bankruptcy case, blah, blah,
7 blah.

8 MR. GENO: Works for me.

9 MR. KELLER: And now with regard to
10 the transcript, what I'm saying is we don't
11 have a copy of the transcript to provide to
12 you.

13 MR. RUHL: But it's ready for review
14 at the court reporter's office?

15 MR. KELLER: Yeah, but I'm not going
16 to get a copy of it until this FOIA matter is
17 resolved, because I don't have the document.

18 MR. RUHL: Okay. You are saying
19 it's not in your custody, possession or
20 control? That's what you're saying?

21 MR. KELLER: That's correct.

22 No, I'm saying it's not in my
23 custody or possession. It is -- I guess --

24 MR. LEECH: It is under your
25 control.

1 MR. KELLER: It's under FCC's
2 control. I mean, the fact of the matter is, we
3 have got a situation here, we have a protective
4 order and it has various provisions. The
5 Havens' parties have filed a FOIA request
6 seeking information that is subject to the
7 protective order that has been given to him and
8 that would violate the protective order, so I'm
9 going to have to have that matter resolved
10 before we provide any more information to the
11 FCC.

12 MR. RUHL: Can we -- we need to get
13 that and it can be subject to whatever
14 protective order -- the protective order we
15 just talked about being fine with, we can get
16 that in the bankruptcy case, and if it's highly
17 confidential information and it's produced
18 subject to the protective order, it's not going
19 to go to SkyTel, it's going to go to SkyTel's
20 counsel, so that seems to resolve that issue
21 because there is no question that transcript is
22 in your control and the expert witness of the
23 debtors identified it as part of the responsive
24 documents, so what's the problem with doing
25 that?

1 MR. KELLER: It is not highly
2 confidential information until it has been
3 reviewed and so designated and submitted to the
4 FCC so right now, we would have to deal with it
5 under a purely bankruptcy-related protective
6 order.

7 At this moment, I have no confidence
8 in any protective order because what the SkyTel
9 parties will do is they'll just turn around and
10 use some other method to go around it, like
11 they're doing with the FOIA and the FCC. They
12 are a party to the protective order and they
13 went around the FCC.

14 MR. RUHL: If it just goes to us
15 under the terms of the protective order in the
16 bankruptcy case, the lawyers, how is that a
17 problem?

18 MR. KELLER: Because that's the same
19 way the documents went in to the FCC. They are
20 now being sought under FOIA. Supposedly, they
21 were only supposed to be reviewed by certain
22 parties. They're not supposed to be provided
23 to principals, now we have principals going and
24 asking for them under FOIA.

25 So the agreement is meaningless.

1 The protective order seems to be meaningless.

2 MR. RUHL: We will just have to file
3 a motion tomorrow and get it heard by the ones
4 that are going to be heard next week by the
5 bankruptcy judge.

6 MR. HAVENS: Danny, take a break and
7 give me a call.

8 MR. RUHL: Okay.

9 Go off the record for a minute.

10 (A short recess was taken.)

11 BY MR. RUHL:

12 Q. Mr. Reardon, what was the time frame
13 as best you can recall when you were the CEO of
14 Mobex?

15 A. Well, let's see. When you refer to
16 Mobex, there are many different entities.
17 Mobex Communications, Inc. --

18 Q. Tell me the one that you were the
19 CEO of.

20 A. Mobex Communications, Inc., is the
21 parent company of about 12 or 13 subsidiaries.
22 One of them is Mobex Network Services. Another
23 was Mobex Midwest, which was our operation in
24 Indianapolis. We had Mobex Idaho in Boise,
25 Idaho. We had Mobex Managed Services Company

1 in Fort Wayne, Indiana. There is Mobex
2 Atlantic in Richmond, so I was the chief
3 executive officer -- I think my exact title was
4 president and chief executive officer of Mobex
5 Communications, Inc., beginning in January of
6 2001.

7 I was also -- at or around the same
8 time, the president of the various affiliated
9 companies, Mobex Atlantic, Mobex Midwest, Mobex
10 Network Services, so when we say Mobex, there
11 are a lot of Mobexes.

12 The company that ultimately ended up
13 buying an asset purchase agreement, the AMTS
14 licenses was known as Mobex Network Services.

15 Q. Do you hold any other senior officer
16 positions with any of those Mobex entities
17 other than what you just told me?

18 A. Well, let's see. Prior to being
19 promoted to the position of president and CEO
20 of Mobex Communications, Inc., from roughly
21 October 1997 to December of 2000, I served as a
22 general counsel for Mobex Communications, Inc.,
23 and a number of its affiliates. There was no
24 Mobex Network Services for most of that time,
25 but there were a number of other affiliates.

1 I was also the secretary of the
2 board, so I would take the board minutes for
3 Mobex Communications, Inc., throughout that
4 time frame.

5 Q. What officer positions have you held
6 in the debtor and during what time frames?

7 A. Well, let's see. Right now, the
8 MCLM is debtor in possession. I'm not an
9 officer. I'm simply hired as a manager-type
10 person. Prior to August 1st of 2011, when it
11 was Maritime Communications/Land Mobile, LLC, I
12 worked as a general manager, not as an officer
13 of the company.

14 Q. Did you ever hold yourself out in
15 any signed documents or debtor documents as an
16 officer of the company?

17 A. Did I ever hold myself out as an
18 officer?

19 Q. Were there any Maritime
20 Communications/Land Mobile, LLC, contracts in
21 which you signed and underneath your signature,
22 indicated you were a CEO of Maritime?

23 A. Yes.

24 Q. What was that about? I take it from
25 your prior testimony you were not actually --

1 you are saying you were not actually CEO of
2 Maritime, right?

3 A. As I have come to understand it, I
4 was never approved by the board by Sandra
5 DePriest, as an officer of the company, and so
6 I testified at great length -- I know you don't
7 have the transcript yet, before the FCC last
8 month about this issue of were you an officer,
9 were you a manager, et cetera, and so as I
10 understand it, Sandra DePriest is the sole
11 officer and director of the company.

12 There was never a board meeting
13 appointing me to be an officer of the company,
14 so as she has indicated, my title of CEO was
15 honorific in that sense and was not meant to
16 convey that I was an officer of the company.

17 Q. Is one of the interest holders in
18 the company -- I think if I recall it right, it
19 was S/RJW Limited Partnership? Does that sound
20 right?

21 A. Yeah, that rings a bell. That's --
22 somehow is maybe a holder of most of the
23 Maritime membership interests or something like
24 that.

25 Q. Do you know who the general partner

1 is of that partnership?

2 A. I'm not certain, but I believe that
3 the S/RJW stands for Sandra, Robert, John,
4 Warner, which are her three children, so Sandra
5 is probably involved in that.

6 Q. Do you know who the limited partners
7 are?

8 A. I don't, not offhand, no.

9 Q. Do you know if that entity including
10 the general partner or limited partners
11 approved the plan of reorganization that is
12 filed in the bankruptcy case?

13 A. If that entity approved the plan of
14 reorganization? I don't know.

15 Q. Do you know if the limited partners
16 of the S/RJW -- do you know if the limited
17 partners of the S/RJW entity approved the plan
18 of reorganization?

19 A. I don't know.

20 Q. Have you ever had any other official
21 role in Maritime Communications/Land Mobile,
22 LLC, other than the management role you
23 described earlier?

24 A. Yes. Maritime Communications/Land
25 Mobile purchased the majority of stock of a

1 company called Critical RF, Inc., in or around
2 March of 2006. From March of 2006 to March of
3 2009, I spent the majority of my time, probably
4 90 percent of my time, working for Critical RF
5 to sort of try to get that company going.

6 Q. Critical RF is owned -- the stock is
7 owned by Maritime; is that right?

8 A. Yeah, a majority of the stock of
9 Critical RF was purchased by Maritime and then
10 some of the stocks was issued or retained by
11 the founder, Steve Calabrese. Today, I'm not
12 sure what the exact amount of the stock is that
13 is held, but I believe that Calabrese gave up
14 his stock when he left.

15 Q. Other than what you've already told
16 me, have you had any other position in Maritime
17 other than -- I guess being in a management
18 role and/or being involved personally with
19 Critical RF in the running of that company?

20 A. Not that I can recall, no.

21 Q. Does the debtor have any claim or
22 potential claims -- and I'm asking you as the
23 corporate rep, of course, does the debtor or
24 debtor in possession have any claims or
25 potential claims against Donald DePriest or

1 Sandra DePriest in connection with matters
2 referenced in the hearing designation order?

3 A. Does the debtor have any claims or
4 potential claims? I don't know.

5 Q. Has the debtor or debtor in
6 possession discussed the possible existence of
7 any claims or potential claims against Donald
8 DePriest or Sandra DePriest in connection with
9 the actions identified in the hearing
10 designation order?

11 A. Can you ask that question one more
12 time? Has the debtor --

13 Q. Are you aware of the debtor
14 considering whether it has any claims against
15 Donald DePriest or Sandra DePriest related to
16 the actions that are set forth in the hearing
17 designation order?

18 A. Yeah, I know that there has been a
19 lot made about this idea that Don and/or Sandra
20 DePriest may have personally guaranteed some
21 debts of some of the secured lenders, so to the
22 extent that those debts are paid off, I believe
23 those guarantees would extinguish. If those
24 debts were not paid off, then those guarantees
25 may kick in or something like that, so I

1 believe that there is -- certainly from the
2 debtor's standpoint, the debtor in possession
3 standpoint, there is an interest in, you know,
4 what happens to those guarantees, and in
5 particular, I believe the Council Tree plan
6 would have those guarantees sort of convey over
7 to Council Tree perhaps as an asset of Council
8 Tree.

9 I believe the Choctaw plan would
10 contemplate that upon the repayment of the
11 secured loans, those guarantees would no longer
12 have any relevancy because the debt's paid, and
13 so from the debtor's perspective, looking at
14 the two different plans, the Choctaw and
15 Council Tree plans, it's a little bit neutral
16 from the sense of, you know, if the secured
17 debt is paid off, then that may not be an asset
18 that the debtor could go after, and I believe
19 that both plans contemplate paying off the
20 secured debt -- or secured liens, whatever.

21 Q. In the debtor's view under its plan,
22 who are the innocent creditors of Maritime that
23 are to be paid off under the plan in the event
24 Second Thursday and any other FCC approvals
25 that might be required is obtained by the

1 debtor?

2 A. Who are the innocent creditors in
3 the debtor's plan? Well, I don't know if it
4 has been specifically spelled out who the
5 innocent creditors are. I think it is clear
6 who the innocent creditors are not.

7 Q. Tell me about that.

8 A. In both Choctaw and Council Tree,
9 the DePriests would contemplate not receiving
10 any recovery for their claims. I believe it's
11 -- maybe Class 10 under the plan.

12 So from the standpoint of the
13 debtor, what you might call the non-innocent
14 creditors would be Maritime and would be Donald
15 and Sandra DePriest and/or I would imagine
16 their affiliates, you know, whether it's S/RJW
17 or whatever affiliates they would control.

18 But ultimately, I believe the debtor
19 in both the Council Tree and Choctaw plans
20 contemplate that this is a decision which the
21 FCC would need to make, of course, when it
22 makes its Second Thursday determination, who
23 are the, quote-unquote, innocent creditors and
24 who are not.

25 Q. As far as you know, that decision

1 hasn't been made?

2 A. Oh, well, I believe the Second
3 Thursday decision -- yeah, as far as I know,
4 the application hasn't even been filed.

5 Q. So the determination of who the
6 innocent creditors are has not been made by the
7 FCC or otherwise?

8 A. As far as I know, it would not be in
9 front of the FCC formally yet because I believe
10 and Bob Keller is a better authority on this
11 than I am, but I believe that determination is
12 only made when an assignment application is
13 filed and Second Thursday relief is formally
14 sought at the FCC, so I believe that that -- to
15 answer your question, I believe that that
16 determination has not been made by the FCC.

17 Q. Is there anyone else who would not
18 qualify as an innocent creditor in the debtor's
19 view, other than who you've already identified,
20 which were the DePriests, Maritime or any
21 affiliates of the DePriests?

22 A. Well, it's possible that any owner
23 of membership interests of Maritime, and I
24 believe there is a gentleman who I never met
25 named Fred Goad, G-O-A-D, who is identified as

1 owning perhaps two percent or some de minimus
2 amount of the Maritime Communications
3 membership interests. It is on the public
4 record, but -- so to the extent that Maritime
5 Communications and its owners would be
6 categorized perhaps by the FCC as not innocent
7 creditors, Mr. Goad may also fall under that
8 designation.

9 Q. You mentioned any affiliates of the
10 DePriests which would -- and you specifically
11 mentioned maybe S/RJW as one of those
12 affiliates, are you aware of any other -- are
13 there any other affiliates out there that you
14 were talking about?

15 A. Well, I know that at the FCC, the
16 company has filed -- the company being
17 Maritime, Maritime Communications/Land Mobile
18 filed its ownership disclosure in which it
19 said, you know, S/RJW I believe is either owned
20 by Sandra or maybe there is another company
21 involved there, communications something,
22 something, something so anyway, there's all --

23 Q. You are talking about the general
24 partner I think is Communications, Inc., or
25 something?

1 A. Right. Something like that, yes.

2 So my answer was meant to sort of
3 encompass any DePriests-related company.

4 Q. You are generally familiar with who
5 the secured creditors are in the debtor's plan;
6 is that right?

7 A. I'm sorry? I'm generally familiar
8 with?

9 Q. With who the -- the identification
10 of the secured creditors in the plan?

11 A. Do you mean like who they are?

12 Q. Collateral Plus, and RTC exactly,
13 who they are?

14 A. Yes.

15 Q. Did those secured creditors know
16 about any of the -- any or all of the SkyTel
17 FCC challenges to these licenses or to the
18 Mobex licenses -- let me back up.

19 Did any of those secured lenders
20 know about the FCC challenges to the Mobex
21 licenses before those licenses were sold to
22 Maritime?

23 A. Did any of the secured creditors
24 know about the SkyTel challenges to Mobex?

25 Q. To the Mobex licenses that were sold

1 to MCLM?

2 A. So Mobex Network Services sold
3 licenses to MCLM?

4 Q. Yes.

5 A. Okay.

6 Q. At the time that occurred, did the
7 secured creditors -- any of the secured
8 creditors know that SkyTel had filed challenges
9 in connection with those licenses at the FCC
10 level?

11 MR. GENO: Let me object to the form
12 of the question. I think that assumes that
13 there were secured creditors in existence at
14 the time, and I'm not sure that there were.

15 MR. RUHL: Let me clarify. I'm only
16 talking about the people that are listed as
17 secured creditors.

18 MR. GENO: Thank you. Withdraw the
19 objection then.

20 THE WITNESS: Well, any opposition
21 to the filing would have been a matter of
22 public record, so I can only speculate, you
23 know, did NRTC -- did, you know, who else is a
24 secured creditor? Chris Dupree or any of these
25 folks, did they know about that? I'm not sure.

1 BY MR. RUHL:

2 Q. You don't have any specific
3 knowledge one way or another?

4 A. Well, NRTC certainly was aware of
5 Havens protesting the 200 megahertz band
6 because NRTC owns 220 to 222 megahertz
7 licenses, and I believe that Warren Havens has,
8 in the past, opposed NRTC matters or matters
9 that might involve NRTC members in the 200
10 band, so they would have been aware certainly
11 of Havens as a -- what I might call a serial
12 litigator, whether they were aware of the exact
13 protest of Havens of the purchase or not, I
14 would imagine that they were, but when you take
15 their depositions, may be the best people to
16 ask. Then the other secured lenders, I'm not
17 sure if they were aware at the time or not.

18 Q. Were any of those entities or people
19 identified as secured lenders in the plan, were
20 any of those entities or people aware of the --
21 of SkyTel's challenges to the geographic
22 licenses at the time of the Auction 61
23 occurring?

24 A. Again, I don't know. I was an
25 employee of Mobex Communications, Inc., and

1 Mobex Network Services up until January of
2 2006. The auction occurred in 2005. Prior to
3 the grant by the FCC of the assignment of the
4 Mobex Network Services licenses to Maritime,
5 and so, you know, when those challenges were
6 made by Havens against Maritime's participation
7 in the auction, I'm not sure, you know, what
8 involvement these secured folks had or what
9 they knew about at that time.

10 Q. The challenges were, as you said
11 before, a matter of public record, right?

12 A. They should have been. You know,
13 generally when you challenge an auction or
14 anything like that, it is usually available on
15 the FCC's website.

16 Q. The asset purchase agreements that
17 have been approved by the bankruptcy court, are
18 you familiar with those?

19 A. Yes.

20 Q. Did you sign any of those asset
21 purchase agreements on behalf of Maritime?

22 A. I believe that I did. Without, you
23 know -- I don't have them in front of me, but
24 generally, you know, Sandra DePriest would sign
25 those or I would sign those, you know, with her

1 authority.

2 Q. To the extent you signed any of
3 those and CEO is listed under your name -- let
4 me back up.

5 Did you have -- to the extent you
6 signed any of those, did you have authority
7 from Maritime to do so?

8 A. As I understood it, I did. In all
9 situations, I would talk to Sandra about the
10 transaction. She would review the transaction
11 and talk about things like indemnification,
12 purchase price and the like. As I testified in
13 my FCC testimony, I would often use either NRTC
14 and/or Spectrum Bridge to help with evaluation.
15 You know, if I had an idea of what the price
16 might be.

17 It was also very convenient to run
18 those numbers by Don DePriest because he was in
19 the communications industry for two or three
20 decades, so on the pricing matters, I would
21 often consult with others especially to get a
22 little bit of a sanity check.

23 Sandra DePriest would usually be
24 somebody who would be involved, you know, once
25 we got to the time frame where we thought that

1 we might have a price that made sense to most
2 people, then I would contact her, get her
3 review and approval, and I would either sign it
4 myself or if she was available and was able to
5 sign it -- because she travels from time to
6 time, then she would sign it.

7 Q. If I understand -- is your testimony
8 -- are you testifying today that to the extent
9 you signed any of the APAs, you had authority
10 to do so from Maritime?

11 A. Yes. I believe that I did. What I
12 would do to get that authority is specifically
13 speak with Sandra DePriest about those
14 contracts.

15 Q. Maritime's secured debt, the loans
16 that they got from Pinnacle Bank, from Watson &
17 Downs, R. Hane Hollis, III, Chris Dupree, NRTC,
18 those five lenders to Maritime, and I think
19 Pinnacle has since assigned their claims to
20 Collateral Plus; is that right?

21 A. It's my understanding.

22 Q. At the time Maritime took on that
23 secured debt, did Maritime notify those lenders
24 in any way of the SkyTel challenges to the
25 licenses?

1 A. You know, I'm not sure. I was not
2 involved in those discussions and, in fact, as
3 I testified in front of the FCC, I know you
4 don't have the transcript, last month, when
5 talking with NRTC, I had no idea that there
6 were these other folks who had loans and had
7 filed UCCs and had liens in place.

8 Q. Which ones are you talking about
9 specifically?

10 A. Dupree, Watson, Hollis and Pinnacle.
11 They were certainly Pinnacle at the time. They
12 brought it to my attention at NRTC that they
13 did lien search and found these folks had filed
14 UCC. So I was not involved in those
15 negotiations with Pinnacle, which is now
16 Collateral Plus, Hollis, Watson, Dupree, you
17 know, those folks -- what they were told, when
18 they were told it, I'm not sure.

19 Q. Do you know who would know? Do you
20 know who negotiated those deals or who was
21 involved in those deals?

22 A. I don't know. I would imagine it
23 would probably be Sandra and Don DePriest.

24 Q. So you were only aware of or
25 involved in the loan from NRTC to Maritime; is

1 that right?

2 A. Yeah, that's right. I knew NRTC
3 from the past. They had been a licensee back
4 when I was an attorney at Keller and Heckman in
5 1995 through 1997 roughly. I had done some
6 work for them, they were a client of that firm,
7 and when they were interested in essentially
8 getting a secured position as a lender, they
9 did a UCC search and said, hey, who are these
10 people? I said, that's a damn good question.

11 So it was a little bit embarrassing
12 to me that I didn't know that in advance.

13 Q. Is it right that each of the secured
14 creditors claimed to have liens in -- among
15 other possible things, the proceeds of the
16 Maritime's licenses?

17 A. I believe that is correct. As I
18 understand it from their filings in the
19 bankruptcy court, they purport to have liens
20 over the proceeds of the licenses because I
21 believe that the FCC prevents lienholders from
22 holding a security interest in the actual
23 license, but that the FCC does permit
24 lienholders to hold an interest in the proceeds
25 of the license, and I think it's also possible

1 to get a lien over -- for example, like stock
2 or membership interests of the licensee. You
3 just can't get a lien in the actual license is
4 my understanding.

5 Q. You were involved in the NRTC
6 loaning money to the debtor, right?

7 A. Yes.

8 Q. Do you know if NRTC was aware of
9 SkyTel's challenges to the Maritime licenses at
10 or before the time they loaned money to the
11 debtor?

12 A. You know, I'm not aware, as I
13 testified earlier, I may have answered this
14 question but NRTC generally was aware of
15 Havens.

16 Q. In the 220 megahertz, right?

17 A. That's right. He has -- this all
18 would have been public record so whether they
19 were aware of any challenges he made to the
20 auction or any other transactions, they would
21 be the better people to ask.

22 Q. At the time NRTC loaned money to the
23 debtor, did you have any discussions with NRTC
24 at or before -- let me back up.

25 At or before the time NRTC loaned

1 money to the debtor, did you have any
2 discussions with them about the SkyTel
3 challenges to any of the debtor licenses?

4 A. You know, I just don't recall. It
5 has been six years.

6 Q. To the best of your knowledge, you
7 just don't recall. Is that the answer?

8 A. Yeah. I just don't recall.

9 Q. Regarding the plan as proposed, did
10 the debtor consider -- as opposed to going and
11 seeking Second Thursday relief, did the debtor
12 consider proceeding with the show cause hearing
13 in trying to clear those claims up instead of
14 filing for bankruptcy and proceeding with
15 Second Thursday?

16 A. Can you ask that question again?

17 Q. Yes, I will.

18 The plan, as we discussed, relies in
19 large part on the debtor obtaining Second
20 Thursday relief and other FCC approvals that
21 might be required to transfer the licenses to
22 Choctaw or CTI. Did the debtor consider, at
23 any point, instead, just trying to move forward
24 with the show cause hearing under the hearing
25 designation order and just clear up -- try to

1 -- prevail, I guess, the show cause hearing and
2 clear up those claims in its favor instead of
3 trying to seek Second Thursday?

4 MR. GENO: Object to the form of the
5 question.

6 THE WITNESS: I guess I'm confused
7 by the question because as I testified earlier,
8 the hearing designation order came out maybe in
9 April of 2011, the debtor filed Chapter 11
10 August 1st of that year. For the three months
11 prior to that, none of us were paid our
12 payroll, there was just no money, so did the
13 debtor consider going on with the hearing or
14 whatever, you know, the debtor had no money, so
15 the debtor filed Chapter 11 because it couldn't
16 pay for its ongoing obligations.

17 So, you know, there wasn't much of a
18 choice one way or the other. It wasn't a
19 matter of, you know, what do we do from a
20 regulatory standpoint. It was a matter of, we
21 don't have any money, and when you don't have
22 any money and you can't meet your obligations
23 and people haven't been paid, you know, I've
24 got to talk to Tim Smith and Sharon and say,
25 hey, I'm sorry, you haven't been paid and I'm

1 sorry your families are going without, I
2 haven't been paid either. We haven't paid
3 office rents and the phone is ringing, so it is
4 not like we had really much of a choice to
5 make. We didn't have any money.

6 BY MR. RUHL:

7 Q. I recall that testimony. Thank you.

8 The plan references or says, as I
9 read it, correct me if I am wrong, that any
10 executory contracts or unexpired leases that
11 might exist that haven't been either already
12 rejected or approved by the bankruptcy court
13 will be assumed and assigned upon confirmation?

14 A. Okay.

15 Q. Are there any other -- are there any
16 executory contracts or unexpired leases in
17 existence that would be assumed and assigned
18 under that provision.

19 In other words, are there -- are
20 there any executory contracts or unexpired
21 leases out there that haven't already been
22 approved by the bankruptcy court?

23 A. Let me just flip to the definition
24 of executory contract. It means any contract
25 including without limitation any unexpired

1 lease to which the debtor is a party is capable
2 of being assumed or rejected.

3 As I understand it, we have a number
4 of leases with Tower Company, like I mentioned
5 earlier, we have Crown Castle, American Tower,
6 a number of tower companies, where we lease
7 tower space, so I would imagine that whether
8 it's Choctaw or Council Tree, they would want
9 to continue those leases in place.

10 I'm not exactly sure under Section
11 365 of the bankruptcy code if those qualify as
12 an executory contract. I'm just not an expert
13 in your area of law.

14 Q. Let me see if I can -- thank you for
15 that answer, and I wasn't thinking about the
16 tower leases, so let me ask you this: Are
17 there any other asset purchase agreements that
18 were entered into pre-petition where someone is
19 going to buy and/or lease some debtor spectrum
20 that haven't already been the subject of a
21 motion filed by the debtor in the bankruptcy
22 case?

23 A. Are there any asset purchase
24 agreements entered into before the petition was
25 filed that have not been filed with the court

1 for its approval?

2 Q. Yes.

3 A. Let's see. Well, I can't recall if
4 we filed for Pinnacle.

5 Q. You have not.

6 A. Okay. There's Evergreen School
7 District, which is a part of the Puget Sound
8 energy asset purchase agreement. It's
9 referenced in there.

10 Evergreen School District in
11 Vancouver, Washington, I believe. They signed
12 a lease. That was probably back in 2008 or '9.

13 There is the Central Communications
14 Network, CCN, management agreement from I
15 believe 2003, which was then assumed by the
16 debtor by Maritime in 2006. That technically
17 remains valid, although they haven't paid us on
18 that in a long time and we have a judgment for
19 past due amounts, but that lease remains in
20 effect through I believe 2013.

21 I'm trying to think if there are any
22 other leases or purchase agreements.

23 Q. Would it be helpful if I listed off
24 the ones that have already been subject to the
25 motion in the bankruptcy court?

1 A. Well, thank you, but I think I know
2 all those. I'm just trying to think if there's
3 been anything else left out there.

4 Q. The Rappahannock deal --

5 A. Yes, sir.

6 Q. -- that was the subject of recent
7 motion, that was post-petition, correct?

8 A. The Rappahannock asset purchase
9 agreement was post-petition.

10 Q. Was there one that was pre-petition?

11 A. There were two leases as I mentioned
12 earlier. One lease was from the 2009 time
13 frame which is a direct lease from Maritime to
14 Rappahannock. The other is a lease from
15 Maritime to NRTC, under which NRTC subleases
16 that spectrum to Rappahannock.

17 So if you add those two together,
18 the channels covered in the asset purchase
19 agreement are leased under those two lease
20 agreements. One is a direct lease and one is a
21 sublease through NRTC.

22 I'm trying to think if there are any
23 other agreements which have not been -- well,
24 one is -- I believe it has been brought in
25 front of the court but it expires at the end of

1 December of this year, which is the Spectrum
2 Tracking Services lease.

3 Q. No. That has not been brought up
4 unless it's under a different name.

5 A. Spectrum Tracking Services leases
6 spectrum from us in five markets, us being
7 Maritime Communications, in I believe five
8 markets. That lease expires 12/31 of 2012.

9 Q. So there is a Pinnacle -- Pinnacle
10 is an asset purchase agreement or a lease or
11 both?

12 A. Pinnacle is a lease. It's a
13 different Pinnacle than the Pinnacle that we
14 talked about. It is not the Collateral Plus
15 Pinnacle.

16 Q. Right.

17 A. It's Pinnacle Wireless.

18 Q. Pinnacle Wireless is a lease.

19 Evergreen, is that a lease, a sale
20 or both?

21 A. That is a lease. It is Evergreen
22 School District. Spectrum Tracking Service --

23 Q. Were you saying that that was
24 already approved as part of the approval of the
25 Puget Sound APA or you're just saying it's kind

1 of in the same area?

2 A. It's in the same area and it's
3 referenced in the Puget Sound APA, because
4 Puget Sound has to protect their -- protect the
5 school district from interference.

6 Q. So there is a lease with Pinnacle
7 Wireless, there's a lease with Evergreen School
8 District, there's the CCM management agreement
9 that is subject to a judgment, and there is --
10 there were two Rappahannock leases
11 pre-petition, one a direct lease and one a
12 sublease, right?

13 A. That's correct.

14 Q. Have those expired or are they just
15 going to go away upon the new deal being
16 approved if it's approved?

17 A. Okay. Those leases have not
18 expired. They are still in effect with
19 Rappahannock, and the asset purchase agreement
20 would contemplate that once Rappahannock
21 purchases those licenses, then the leases would
22 no longer be relevant because they bought the
23 same frequencies, if that makes sense.

24 Q. It does.

25 A. And then there's Spectrum Tracking

1 Service.

2 Q. Okay. Is that a lease or a sale or
3 both?

4 A. That is a lease.

5 Q. Of spectrum?

6 A. Yes.

7 Q. So does the debtor's plan
8 contemplate that the leases we just discussed,
9 Pinnacle Wireless, Evergreen School District,
10 Rappahannock and Spectrum Tracking Services
11 would be assumed by the debtor upon
12 confirmation?

13 A. I believe that is the case.

14 Q. You've mentioned a couple of times,
15 NRTC and their involvement, for example, with
16 the Rappahannock sublease that predated 2009,
17 you thought?

18 A. I believe that's right.

19 Q. Can you just give me a general
20 explanation of the relationship between NRTC
21 and Maritime?

22 A. Sure. NRTC is an association of
23 rural electric cooperatives. They look to
24 NRTC, which is a National Rural
25 Telecommunications Cooperative as a source of

1 spectrum, equipment, services for their
2 members, and so what the rural electric
3 cooperatives do is they will get access to
4 equipment on a -- on better terms than they
5 otherwise might if they were to buy it directly
6 from manufacturers for example.

7 They will get access to spectrum
8 that they otherwise individually might not have
9 access to, so NRTC owns a nationwide license of
10 220 to 222 megahertz which is in the same band
11 where Mr. Havens lost his 360 licenses for
12 nonconstruction after 12 years. The same 220
13 to 222 band.

14 NRTC also has a right to market our
15 spectrum to its members for -- like a brokerage
16 kind of deal, so when we signed the brokerage
17 agreement with Spectrum Bridge in 2008, we
18 specifically excluded from that brokerage
19 agreement, marketing and sales to rural
20 electric cooperatives, which remained the area
21 that NRTC would market the spectrum to, and so
22 a number of the pending transactions, such as
23 Jackson County Electric, Rappahannock Electric,
24 Shenandoah Valley Electric, a number of those
25 pending transactions involved members of NRTC,

1 and often, what will happen is, you will find
2 that there will be a member, such as Shenandoah
3 Valley Electric or Rappahannock Electric that
4 want spectrum and perhaps NRTC doesn't have any
5 more spectrum available, and if that's the case
6 then -- because we are so close in the spectral
7 bands, we're just below 220 megahertz, our
8 spectrum can work on the same equipment so they
9 will come to us as a way to get additional
10 channels. So that's sort of the involvement
11 relationship with NRTC.

12 Q. Does NRTC -- is there an agreement
13 between NRTC and the debtor whereby the debtor
14 has rights to lease or otherwise market or
15 transfer any NRTC 220 megahertz licenses?

16 A. You know, I don't recall. At some
17 point, I think we talked about that. There
18 have been a number of different iterations of
19 the agreement over the years, but certainly,
20 the idea is or was that in urban locations
21 where there are no NRTC members, because they
22 are rural electric cooperatives, in urban
23 locations, it might be worthwhile for Maritime
24 Communications to be able to combine its
25 marketing efforts with also offering for sale

1 or lease the NRTC spectrum, but that never
2 really came to fruition. I don't think we have
3 ever done a deal where we have been able to add
4 NRTC spectrum into what we have had.

5 Q. Is there an agreement in existence
6 that gives Maritime the right to market and/or
7 lease or otherwise license transfer, whatever,
8 NRTC's spectrum?

9 A. You know, I just don't recall. I
10 think early on in one of the original
11 agreements it was discussed, but whether that's
12 gone away or been superceded -- the practical
13 reality is, we haven't done that.

14 Q. Is there such -- okay.

15 The plan, like I said before,
16 contemplates assuming any such agreements,
17 executory contracts, whatever, upon
18 confirmation. Does the plan contemplate
19 assuming any agreement whereby the debtor can
20 market or lease NRTC spectrum?

21 A. I see what you are saying. No. I
22 don't think so. I don't think so.

23 Q. Was NRTC at all involved in the deal
24 that is in front -- the Rappahannock sale
25 motion that's in front of the court now?

1 A. Can you ask the question again,
2 please?

3 Q. Yes. I just want to know if -- I
4 know there was an NRTC and a Rappahannock
5 sublease pre-petition that is kind of -- for
6 lack of a better term, be subsumed if this
7 post-petition sale agreement gets approved by
8 the court, okay?

9 Was NRTC at all involved in the
10 negotiations of that agreement that is before
11 the court now?

12 A. Yes.

13 Q. Can you tell me about that?

14 A. Yes. We have an existing agreement
15 with the Shenandoah Valley Electric which was
16 recently approved by the -- by Judge Houston in
17 the bankruptcy court. Prior to that, we had a
18 lease of channels with Shenandoah Valley
19 Electric.

20 Rappahannock Electric is right
21 next-door to Shenandoah Valley Electric, so
22 those two companies or their executives got to
23 talking and said, hey, I see you have taken
24 your lease, Shenandoah, and turned it into a
25 purchase agreement. We would be interested in

1 doing the same thing.

2 So I got a call from Jack Harvey at
3 NRTC who said basically, the folks at
4 Rappahannock have a sublease with us for some
5 channels, a lease with you directly for some
6 other channels, and they're interested in doing
7 what Shenandoah Valley just did, putting that
8 into a purchase agreement. I said, okay, I
9 will be happy to contact them.

10 I contacted Gary Schwartz, who I've
11 known at Rappahannock, who is sort of the
12 person in charge of these types of things for
13 Rappahannock, and negotiated a transaction very
14 similar to what we did with Shenandoah Valley
15 Electric.

16 Q. Was NRTC -- is that the extent of
17 NRTC's involvement with that transaction or did
18 they do anything else, such as -- but not
19 limited to negotiating the price?

20 A. No, they did not negotiate the
21 price, nothing like that. It was more as a --
22 I don't know if I'd call it a facilitator.
23 Somebody to introduce the idea of Rappahannock
24 buying from us the channels. And then
25 following up after we signed the purchase

1 agreement, it took a number of weeks, and it's
2 really my fault, to get the transaction, you
3 know, the motion before the court, the
4 bankruptcy proceeding, so I was regularly
5 getting e-mails from Rappahannock's attorney
6 and from Jack Harvey at NRTC saying, hey, you
7 know, you have got a November 14th confirmation
8 date for your plan but you haven't put this
9 motion for sale in front of the court.

10 So there was some concern by
11 Rappahannock which kind of filtered then up to
12 Jack Harvey, who I have known for a long time,
13 and so that was sort of his involvement was to
14 help to make sure that we were filing what we
15 needed to file at the FCC, at the bankruptcy
16 court, et cetera, to keep the transaction on
17 track, or get it on track, whichever.

18 Q. The plan contemplates Rappahannock's
19 lease and sublease being assumed, though,
20 right, because confirmation -- the confirmation
21 hearing occurs before the asset purchase
22 agreement is going to be heard by the
23 bankruptcy court?

24 A. That is a good question. Yeah.
25 That is my understanding and certainly what I

1 have represented to Rappahannock is that our
2 hope or plan is to have the leases come into
3 the plan so that there wouldn't be a gap in
4 time basically, because they built these
5 systems, they are using this spectrum already
6 under this lease, so, you know, we want to make
7 sure that that continues forward.

8 MR. RUHL: If it's all right with
9 you guys, I need to take a break.

10 I'm going to put you guys on mute.

11 (A short recess was taken.)

12 BY MR. RUHL:

13 Q. Mr. Reardon, we discussed a little
14 bit about leases earlier.

15 Can you tell me what site -- site
16 leases are in effect that have not been
17 terminated?

18 A. Do you mean what leases involve
19 site-based licenses?

20 Q. Yeah, I think so.

21 A. Yeah, to the best of my recollection
22 -- let's see. There is the Evergreen lease
23 that involves site-based license on the West
24 Coast. There is a lease with Puget Sound
25 Energy, I believe, for about five sites on the

1 Pacific North and the Pacific Northwest. There
2 is the CCN agreement which we still believe is
3 in place, we never cancelled it, and that is
4 for site-based licenses in Orlando and in the
5 Clearwater, Florida area. There is a lease
6 with Pinnacle Wireless in New Jersey which
7 involved site-based licenses in the middle and
8 northern part of New Jersey, New York area,
9 impacts Manhattan, and I think their contour
10 goes to -- what is just north of New Jersey? I
11 guess Southern New York area. There is the
12 Duquesne Light lease in place which is a
13 site-based license.

14 I'm trying to think of what else I'm
15 missing. That may be all of them that involve
16 site-based licenses.

17 Q. Okay. Let me ask you something:
18 Are you -- is it your understanding that the
19 SkyTel proposal explicitly states that it would
20 involve a three-party settlement between
21 Maritime, SkyTel and the FCC, of all matters
22 relating to Maritime FCC licenses?

23 MR. GENO: Object to the form of the
24 question.

25 THE WITNESS: I don't really have an

1 understanding about a SkyTel proposal because
2 as I testified earlier, it's -- sorry, I don't
3 think I have it in front of me anymore.

4 BY MR. RUHL:

5 Q. Here it is.

6 A. Thank you.

7 It really wasn't much of a proposal.
8 It is more of a letter to the unsecured
9 creditors.

10 Q. Well, I am using the term
11 "proposal." Let's not get wrapped up in that.
12 I'm just talking about the document that's been
13 marked as Exhibit 3 to the deposition.

14 A. Okay. What was the question again?

15 Q. Can you confirm your understanding
16 that that proposal proposes a three-way
17 settlement or a three-party settlement between
18 Maritime, SkyTel and the FCC on all matters
19 related to Maritime FCC licenses?

20 MR. GENO: Same objection.

21 THE WITNESS: No. I think this
22 letter would involve a lot more than three
23 parties because I believe it would require the
24 secured creditors and the unsecured creditors
25 to basically agree to hand over the licenses to

1 Havens to recognize \$2.5 million of a claim
2 related to his New Jersey antitrust action, and
3 so I believe it would involve a lot more than
4 just the FCC.

5 As I testified earlier, I also
6 believe the proposals against the FCC rules
7 which involve what's called greenmail.

8 BY MR. RUHL:

9 Q. The proposal does involve, though,
10 doesn't it, the agreement of at least the
11 debtor SkyTel and the FCC? I'm referring
12 specifically to Items 1, 2, 3 and 4 on Pages 1
13 and 2.

14 A. Well, let's see. Item 1. Clear
15 licenses of adverse claims. SkyTel would
16 dismiss with prejudice all of its claims
17 against licenses in current FCC and court
18 proceedings and agree to make no additional
19 such claims. Clear FCC hearing claims against
20 licenses and terminate the hearing.

21 As I mentioned earlier, that would
22 involve more than just the FCC, because in
23 order to terminate the hearing, that is not
24 something that is within SkyTel's control.

25 Q. You are talking about Item 2, right?

1 A. Yes, sir. So it would involve an
2 administrative law judge. I'm not even sure if
3 that could be done.

4 Q. Does No. 2 say SkyTel would attempt
5 to obtain and would obtain -- under this
6 proposal, FCC settlement of the hearing against
7 the debtor to allow the proposal to proceed and
8 the FCC would have to agree to that?

9 A. I guess my -- to answer your
10 question about is the FCC involved, I'm not
11 sure if the FCC could be involved in that. In
12 other words, once it hands over to the
13 administrative law judge, the hearing and that
14 starts in order to effectively stop that. I
15 don't think that SkyTel -- I guess when I am
16 referring to the FCC, I'm thinking about the
17 Wireless Bureau or their commission, yeah, I
18 just don't know again if that would involve
19 more than the FCC to accomplish that.

20 Q. But No. 2 says the FCC would have to
21 agree. Is that what No. 2 says?

22 A. It says SkyTel would obtain FCC
23 settlement of the hearing. FCC would have to
24 agree. Yeah, I mean the language speaks for
25 itself.

1 Q. The debtor also has to agree.

2 That's what No. 2 says, right?

3 A. SkyTel would attempt to obtain or
4 would obtain FCC's -- against the debtor, and
5 it says the debtor would have to agree.

6 Q. All right. Thank you. Can I have
7 that back?

8 Can you tell me why -- what led to
9 the debtor's decision to file bankruptcy?

10 A. As I testified earlier, the debtor
11 didn't have any money in the bank. Had not
12 been able to pay its obligations, its
13 fundamental obligations, office rents,
14 employees' salaries, cell phone bills, that
15 sort of thing.

16 Q. You are saying that's the primary
17 reason why the debtor filed bankruptcy?

18 A. My understanding is that is the --
19 lack of cash is the main reason, yes.

20 Q. Did SkyTel -- I'm sorry.

21 Did MCLM also file bankruptcy for
22 the purposes of seeking Second Thursday relief?

23 A. I don't know.

24 Q. In your capacity as corporate
25 representative of the debtor here today, you

1 don't know if one of the reasons the debtor
2 filed bankruptcy was to propose a plan and
3 attempt to seek Second Thursday relief?

4 A. As I already testified, the main
5 reason why the company filed Chapter 11 in my
6 understanding is the lack of cash.

7 Q. Was trying to obtain Second Thursday
8 one of the purposes, if not the main purpose,
9 of the bankruptcy filing?

10 A. As I testified earlier, it certainly
11 was not the main purposes. If it was one of
12 the purposes, perhaps Sandra DePriest would be
13 better asked that question to, but it is not my
14 understanding that that was the reason.

15 Q. I'm going to hand you a copy of the
16 objection that SkyTel filed to -- confirmation
17 of the amended plan, and direct you to Page 35
18 and specifically Footnote 170 of the objection.

19 I'm going to ask you a question
20 about that, but before I do, let me ask you
21 this: Were any of the debtor's creditors
22 threatening any action against the debtor on
23 overdue or in default loans before the
24 bankruptcy was filed?

25 A. I'm sorry? What was your question?

1 Q. Were any of the debtor's creditors
2 threatening any adverse action against the
3 debtor in connection with any overdue or
4 otherwise in default loans prior to the
5 bankruptcy filing?

6 A. Well, I didn't have direct contact
7 with the secured lenders in the sense of Chris
8 Dupree, Hane Hollis, those people. Sandra
9 DePriest or Don DePriest would better answer
10 that question, whether they were threatening
11 action against the company.

12 I was an unsecured creditor or am an
13 unsecured creditor, so at the time, I guess I
14 was a debtor of the company that hadn't been
15 paid. Tim Smith and Sharon -- I can speak for
16 the three of us, we were all very concerned
17 that we had worked and had not been paid and
18 you are not allowed to do that. Basically,
19 keep people working and not pay them, so I
20 wouldn't say threat would be the right word,
21 but certainly concern on our part prior to the
22 filing of Chapter 11 and a concern whether we
23 were ever going to get paid, and if not, how
24 much longer were we going to have to work
25 without getting paid or should we just go find

1 different jobs.

2 Q. To your knowledge, were any -- to
3 your knowledge as the corporate representative
4 of the debtor here today, were any of the
5 creditors threatening to take specific action
6 to try to collect or otherwise enforce loans
7 that may have been in default?

8 A. Loans?

9 Q. Any kind of debts of the --

10 A. As I just testified, I'm a creditor
11 and I was threatening to take action to get my
12 money.

13 Q. What actions were you threatening to
14 take?

15 A. Well, let's see. You can file with
16 the Virginia -- I guess it's the Virginia
17 Corporation Commission or there is some
18 employment of, you know -- I don't know if it's
19 the EEOC or -- there's a Department of Labor,
20 something like that in Virginia, and I
21 researched it, and also, I know Tim and Sharon
22 were very concerned also and so I wouldn't
23 characterize it as threats, but it was more
24 communication along the lines of we need to be
25 paid.

1 Q. To your knowledge, did any of the
2 debtor's creditors send default letters or
3 demand letters demanding that their in default
4 debts be paid?

5 A. Certainly, a number of tower
6 companies over the years have sent letters
7 saying, hey, you owe us money, utilities have
8 sent letters prior to the filing, so yes, there
9 were a number of creditors who expressed
10 concern or threatened litigation for
11 nonpayment.

12 Q. Did any of the -- were any of the
13 creditors pursuing any of the guarantees that
14 were provided by Donald DePriest in connection
15 with debts to the debtor?

16 A. I don't know.

17 Q. To the best of your knowledge, they
18 were not?

19 A. I didn't say that. I said I don't
20 know.

21 Q. You don't know if they were or they
22 weren't?

23 A. I don't know if they were or they
24 weren't.

25 Q. Do you have any idea or clue why any

1 of the creditors whose loans were guaranteed by
2 Mr. DePriest aren't going after Mr. DePriest on
3 the guarantees?

4 A. I don't know if they are or if they
5 are not, as I just testified.

6 Q. Do you know -- if they're not, do
7 you know why they wouldn't be?

8 A. I wouldn't want to speculate, no.

9 Q. You gave earlier as an example what
10 -- when I asked the question of what creditors
11 were threatening adverse actions on account of
12 overdue or in default loans, you gave an
13 example of -- I think yourself, Tim Smith and
14 one other person being concerned, and you
15 referenced some potential EEOC action.

16 Am I recalling that right?

17 A. Yes.

18 Q. Were there any other creditors
19 threatening any other adverse actions in
20 connection with in default loans other than
21 what you've already told me?

22 A. Well, I did not have a loan to the
23 company. In other words, my payroll was due so
24 that wasn't a loan. There were a number -- as
25 I testified, a number of creditors, utilities,

1 tower companies. Sharon Watkins, who runs the
2 accounts payable-accounts receivable department
3 would routinely receive phone calls,
4 threatening letters, dunning letters, those
5 sorts of things, from a number of people who
6 were listed on the -- mostly unsecured
7 creditors, so phone companies, utility
8 companies, all -- most of the folks you see
9 listed have sent letters -- termination
10 letters, threatening letters, collection
11 letters.

12 Q. Was that within six months to a year
13 before the bankruptcy was filed?

14 A. I'm sure. Certainly. Oh, yeah.

15 Q. What about any of the secured
16 creditors?

17 A. Any of the secured creditors? Let's
18 see. Was the question -- can you give me the
19 full question?

20 Q. Were any of the parties who were
21 secured creditors at the time the bankruptcy
22 was filed, had any of them threatened any
23 adverse action against the debtor due to the
24 loans that they had made to the company being
25 in default or otherwise?

1 A. As I testified earlier, I didn't
2 have direct interaction with the secured
3 lenders, so if they threatened or to the extent
4 they threatened, I wouldn't have received those
5 communications. Those would have gone directly
6 to Sandra and Don DePriest.

7 I don't know if they threatened
8 during any particular time frame or not.

9 Q. Page 35 of the objection, Footnote
10 170, contains a quote of a voice mail that you
11 left for a person named Chris with Denton
12 County or CoServ shortly after the bankruptcy
13 case was filed.

14 Can you read that and tell me if you
15 can confirm that that is an accurate
16 transcription of -- confirm if you remember
17 that communication and if it's accurate as I
18 set it forth there?

19 A. Do you want me to read the quote
20 with the included comments in there or just
21 read the quote? You know what I mean? Hey,
22 Chris --

23 Q. I'll tell you what. Yeah, read the
24 quote as quoted there and tell me if you recall
25 it. Tell me if you can confirm that that is an

1 accurate characterization of your message to
2 Chris of CoServ?

3 A. Okay. Just looking at the face of
4 it, I don't think it's accurate because it has
5 got a bunch of not true comments.

6 Q. I'm sorry, just disregard that part.
7 Sorry, if that's what you were asking about.
8 You must have misunderstood me. Thanks.

9 A. "Hey, Chris. It's John Reardon with
10 MCLM calling. Hey, I actually have some
11 interesting news to share with you. I think
12 it's good news but it doesn't sound like it.
13 We filed Chapter 11 yesterday in Northern
14 District of Mississippi in Federal Court, and
15 what that does is it stops the hearing at the
16 FCC from taking place and allows the bankruptcy
17 judge to essentially tell the FCC to approve
18 the transactions that are pending and then the
19 money would just go into an escrow account with
20 the bankruptcy court and they would pay out our
21 lenders. The benefit of that is innocent third
22 parties, such as CoServ, get their spectrum and
23 are not injured as a result of any wrongdoing
24 by our former owner, Sandra DePriest and her
25 husband. She and her husband just basically

1 walked away and filed Chapter 11 yesterday."

2 Q. Is that -- what you just read an
3 accurate characterization of the voice mail you
4 left for Chris?

5 A. Well, it looks to be. I remember
6 this came up at the bankruptcy court hearing.
7 I can't remember if it was the last one we had
8 or one before that, and it looks to be similar
9 to what was discussed at that hearing.

10 Q. When you said in there, "what this
11 does is it stops the hearing at the FCC from
12 taking place," what were you referring to
13 there?

14 A. Yeah, this message as it says was
15 left I guess the day after Chapter 11 was
16 filed. So this is my opinion at the time of
17 what that might mean for our customer and
18 basically CoServ, as you know, had entered into
19 an asset purchase agreement with the company
20 and had become a party to the hearing
21 designation order or the show cause hearing, so
22 this is my characterization of what the impact
23 of Chapter 11 might be upon them.

24 It allows the bankruptcy judge to
25 essentially tell the FCC to approve the

1 transactions that are pending and then the
2 money would just go into an escrow account.

3 Now, since that time, you know, I
4 have become more of an expert in bankruptcy law
5 than I was at this time, so I know that, you
6 know, things are not as cut and dry as this
7 voice mail seems to indicate.

8 Q. When you referenced -- when you said
9 "what that does is it stops the hearing at the
10 FCC from taking place," the hearing you are
11 referring to, was that the -- what I have been
12 calling the show cause hearing related to the
13 hearing designation order?

14 A. Yeah, that is probably what that
15 means when I say the hearing, because I think
16 that's the only hearing at the FCC that was
17 taking place at that time.

18 Q. It also says: "The benefit of that
19 is innocent third parties such as CoServ get
20 their spectrum and are not injured as a result
21 of any wrongdoing by our former owner Sandra
22 DePriest and her husband."

23 Do you see where it says that?

24 A. I do.

25 Q. Is that referring to the potential

1 Second Thursday relief that the debtor has now
2 sought -- has now said in its plan it intends
3 to seek?

4 A. No, not specifically. Remember, the
5 context of this is at the time, the company had
6 filed Chapter 11. I had no knowledge in
7 advance of the company filing Chapter 11. I
8 found out about it after the fact. And this is
9 my effort to essentially tell the customer what
10 I think the impact of that would be.

11 So I didn't -- if you would have
12 said to me on August 2nd what Second Thursday
13 is, I don't think I would have understand what
14 is it or what it means, but what I was told,
15 you know, is that essentially when you file
16 Chapter 11, innocent third party, like I say
17 here, such as CoServ, can get their spectrum
18 and not be injured as a result of the fact that
19 Sandra and Don have effectively given up their
20 equity or their membership interests or
21 whatever, and as I say here, walked away from
22 Chapter 11.

23 So, you know, there is a level of
24 sophistication in here which is lacking because
25 this is what I understood the situation to be

1 on August 2nd.

2 Q. What was the basis of your
3 understanding of the situation when this voice
4 mail was left?

5 A. As I recall when the company filed
6 Chapter 11, I was informed about it after the
7 fact, as I mentioned, and I contacted our FCC
8 counsel, Curt Brown, and I asked him, you know,
9 what does this all mean, because obviously, I
10 was -- as I testified earlier, I had not been
11 paid in about three months so I was concerned
12 about what it might mean for me, and I also had
13 a number of customers and I interacted
14 day-to-day -- in some cases, I signed these
15 agreements.

16 I think it has been testified to
17 before that I negotiated most of the terms of
18 these agreements, so I had a number of
19 customers whom I needed to contact and I wanted
20 them to hear about it from me, rather than hear
21 about it from third parties or Havens or
22 somebody else.

23 So, you know, this was basically my
24 effort to reach out to them, alert them to the
25 fact that Chapter 11 had been filed and had

1 tried to convey to them what that might mean to
2 them as parties to the hearing, but also as --
3 in some cases, as creditors because some of
4 these folks had paid deposits. Some of them
5 were leasing the channels and in the case of
6 CoServ, probably both.

7 Q. So the basis of your understanding
8 of what you said here, the benefit of that is
9 innocent third parties such as CoServ get their
10 spectrum and are not injured as the result of
11 any wrongdoing by the former owner and her
12 husband, the basis of that was conversation
13 with the debtor's FCC counsel; is that right?

14 A. That's what I recall. You know, it
15 has been maybe 14 months and a bit of a blur,
16 but I believe that is -- the first person I
17 talked to about it was Curt Brown and trying to
18 figure out what the impact of that would be.

19 Q. Now with your substantial knowledge
20 of bankruptcy and -- that you gained since that
21 time, do you understand that sentence to be
22 describing in essence what would happen if
23 Second Thursday relief is granted?

24 A. Well, again, I don't think that this
25 sentence actually, you know, contemplates

1 exactly what Second Thursday would be, but when
2 you ask the question -- are you talking about
3 the sentence that starts "and what that does?"

4 Q. I'm talking about the sentence of --
5 "the benefit of that is that innocent third
6 parties," the sentence that begins in that
7 manner.

8 A. Okay. The sentence that says: "The
9 benefit of that" -- I guess that means the
10 benefit of the Chapter 11, is innocent third
11 parties such as CoServ get their spectrum and
12 are not injured as a result of any wrongdoing
13 by our former owner Sandra DePriest and her
14 husband?

15 Q. Right. Sounds a lot like Second
16 Thursday to me. Now that you've come to
17 understand what is going on in the bankruptcy
18 case much better than I guess you did when you
19 left this voice mail, would you say that that
20 sentence -- the sentence that is based on your
21 conversation with Curt Brown is really
22 referring to, in essence, what would happen if
23 the debtor gets Second Thursday relief?

24 A. Well, as I understand Second
25 Thursday relief, innocent third parties such as

1 CoServ would theoretically at least get their
2 spectrum, but as I understand it, it is not
3 exactly the way I've described it here.

4 In other words, I believe that
5 Second Thursday focuses on innocent creditors
6 and, you know, CoServ -- I'm not sure if CoServ
7 filed to be a creditor or not. I know that
8 they have withdrawn their application, but it's
9 a little bit apples and oranges here, only
10 because -- as I describe it here in this voice
11 mail, I am talking about innocent third parties
12 like CoServ, but I think that Second Thursday
13 isn't focused on who would get the spectrum,
14 you know, after it's assigned to Choctaw or
15 Council Tree or somebody else.

16 It is more focused on who would get
17 the spectrum right away and would any of the,
18 quote-unquote, wrongdoers benefit. So to the
19 extent that that sentence categorizes CoServ as
20 innocent third party, yes, I don't know if
21 Second Thursday would really apply to them
22 directly.

23 Q. Under the plan filed by the debtor,
24 CoServ is not going to get their spectrum under
25 the debtors plan unless the debtor obtains

1 Second Thursday relief and/or Footnote 7
2 exception to the hearing designation order; is
3 that right?

4 MR. GENO: Object to the form of the
5 question.

6 That's not what the plan says.

7 THE WITNESS: As it relates to
8 Denton County, that neither one's going to
9 happen, I think, because they've filed to
10 withdraw, I think, or not prosecute the
11 purchase agreement.

12 BY MR. RUHL:

13 Q. Well, let's not relate it to Denton
14 County. Let's relate it to any of the other
15 asset purchase agreement parties.

16 A. I'm sorry --

17 MR. GENO: Denton County is CoServ.

18 THE WITNESS: Yeah. CoServ is --

19 BY MR. RUHL:

20 Q. I don't think you answered my
21 questions. What I'm saying is what you
22 described here -- let me back up.

23 Under the plan as proposed, the
24 parties to the asset purchase agreements that
25 have been approved by the bankruptcy court --

1 A. Yes.

2 Q. -- will not get their spectrum under
3 those asset purchase agreements unless the plan
4 proceeds, is confirmed, Second Thursday relief
5 is granted or possibly the FCC grants the
6 exception under Footnote 7 of the hearing
7 designation order. That's correct, isn't it?

8 A. No. I think the plan also
9 contemplates if Second Thursday is sought
10 for -- for example, Council Tree or Choctaw and
11 not approved by the FCC, then the licenses
12 would remain with the debtor and the debtor
13 would either seek to go down the route of
14 finding another buyer or perhaps pursue another
15 avenue like a Chapter 7 or something, so it is
16 not necessarily, as I understand the plan, an
17 either/or -- either Second Thursday or nothing
18 or either Footnote 7 or nothing.

19 It is -- Second Thursday might
20 happen, if it doesn't, the licenses would
21 remain with the debtor or they could be
22 revoked, I guess, and, you know, then a number
23 of different things could happen.

24 Q. So is it your testimony that this
25 voice mail doesn't indicate or at least suggest

1 that one of the reasons the bankruptcy case was
2 filed was for the purposes of attempting to get
3 Second Thursday relief?

4 A. One of the reasons it was filed was
5 to attempt to get Second Thursday? Well, I
6 think that is obviously what I would call a
7 result of a filing of the Chapter 11, but as I
8 testified earlier, the fact that the company
9 had no money really is what drove it to Chapter
10 11.

11 I didn't find out that we were going
12 to file Chapter 11 until after it was filed,
13 which really created a problem for me because
14 it would have been easier and better for me to
15 go to the customers and explain to them what
16 was about to happen or what had happened,
17 rather than a day after the fact trying to
18 contact them. When you have no money, you
19 don't have many choices.

20 Q. Is it your testimony that one of the
21 reasons -- not necessarily the main reason, but
22 at least one of the reasons the debtors filed
23 for Chapter 11 was to attempt to seek Second
24 Thursday relief at the FCC?

25 A. I think it's difficult to say. If

1 the company hypothetically had enough money to
2 continue to operate and to go through the
3 hearing process, it had already begun the
4 hearing process. Hypothetically, that might
5 have been an easier and quicker path, certainly
6 to get to Footnote 7 and/or to get to other --
7 so again, you know, the filing of the Chapter
8 11 and the impact of that in Second Thursday,
9 you know, to say that Second Thursday was a
10 reason for filing Chapter 11, I just don't
11 think that is accurate. Instead, it was the
12 fact that the company had no money. I was
13 threatening to leave, Tim was threatening to
14 leave, people were shutting off power. Tower
15 rents, office rents, cell phone bills.

16 There is only so long you can go
17 without paying people payroll and paying
18 utilities and it was at a critical point.

19 Q. When was the first time -- you said
20 you talked to Curt Brown before you left this
21 voice mail. When was the first time you
22 personally heard of the Second Thursday
23 Doctrine?

24 A. Second Thursday Doctrine?

25 Q. Yes.

1 A. I don't recall.

2 Q. Do you recall if it was before or
3 after this e-mail -- this voice mail?

4 A. I'm sorry, I don't remember.

5 Q. I'm going to play an audio file that
6 is this voice mail. It was produced in this
7 case by CoServ in part of discovery, and ask
8 you if you can confirm that this audio file is
9 you. It sure sounds like you.

10 (Tape played.)

11 MR. RUHL: For the record, I just
12 played an audio file that was produced by
13 CoServ or Denton County in this case that is
14 transcribed in Note 170 of SkyTel's objection
15 to the plan, which is Docket No. 804, except
16 for it doesn't include the bracketed
17 information that is included in Footnote 170.

18 BY MR. RUHL:

19 Q. Mr. Reardon, can you confirm that
20 that voice mail was you and the transcription
21 in Footnote 170 is accurate minus the bracketed
22 information?

23 A. Yes.

24 Q. Thank you. I appreciate that.

25 Does MCLM have any leases with site

1 owners that have not terminated and are
2 currently in effect?

3 A. Tower leases?

4 Q. Right.

5 A. Yes.

6 Q. Can you tell me which leases those
7 are?

8 A. Not by memory, I can't. I know that
9 we have a number of site leases in places from
10 the northeast to the northwest and all points
11 in between. I believe those leases have been
12 produced as part of the FCC's -- what we might
13 call the show cause hearing, our production of
14 documents, and your client, Mr. Havens,
15 purchased a CD that has about 27,000 documents
16 copied on it. He has that in his possession
17 and I believe all of our leases are on that CD.

18 Q. Do you know if the debtor attempted
19 to borrow money from anyone in order to
20 continue its operations without filing
21 bankruptcy?

22 A. Oh, I don't know.

23 Q. Mr. Reardon, are you a licensed
24 attorney?

25 A. Well, let's see. I graduated from

1 law school. I was admitted into District of
2 Columbia and New York State. I don't currently
3 have -- in other words, I've retired, I guess
4 you might say, in New York, so I am -- call it
5 maybe licensed but not actively practicing.

6 Q. Did you practice law at the Keller
7 and Heckman law firm at some point in time?

8 A. I did.

9 Q. Was it -- in your practice, did you
10 focus on FCC-related law?

11 A. Yes.

12 Q. You mentioned earlier that -- I
13 believe -- correct me if I am wrong, I think
14 you said in part that if Second Thursday relief
15 is not obtained under the plan that the
16 licenses would remain with the debtor. Is that
17 your understanding of how the plan works?

18 A. Yeah, my understanding of how the
19 plan works is if -- it is sort of like I said
20 earlier, the debtor is kind of owner financing
21 in a sense that it is relying upon either
22 Choctaw or Council Tree to take the licenses,
23 either try to get Second Thursday approval
24 and/or Footnote 7 approvals for some of the
25 pending deals and perhaps others.

1 If Second Thursday is not achieved
2 by one of the two parties, Choctaw or Council
3 Tree, it's my understanding that the -- in the
4 Chapter 11, that the debtor would then have the
5 licenses and be able to move forward either
6 with another potential buyer or perhaps explore
7 other avenues like a Chapter 7-type liquidation
8 or something.

9 Q. You also mentioned earlier, I think,
10 that another possibility that could result if
11 Second Thursday approval wasn't obtained, is
12 that the licenses could be revoked?

13 A. That is always a possibility. I
14 think the FCC always has the authority to
15 revoke licenses.

16 Q. Is it not correct that if Second
17 Thursday is not obtained, then the debtor has
18 no choice but to either go through the show
19 cause hearing or lose the licenses?

20 MR. GENO: Object to the form of the
21 question.

22 THE WITNESS: Yeah, I don't know if
23 that's the case as I -- I don't think that is
24 exactly right. In other words, as I mentioned
25 earlier, if the FCC were to approve the Chapter

1 7 -- I'm sorry, Footnote 7 exception for
2 railroads and utilities and oil and gas
3 companies, which have all asked for that
4 treatment, then there is a path forward which
5 may involve selling licenses to groups, such as
6 the rails and utilities and applying under
7 Footnote 7 going forward. So, yeah.

8 BY MR. RUHL:

9 Q. Is the possibility of Note 7 -- can
10 I just call it Note 7 relief?

11 A. Please.

12 Q. Is the possibility of Note 7 --
13 Footnote 7 relief the only way that the debtor,
14 you know, in the event -- let me start over.

15 In the event Second Thursday relief
16 is denied, isn't it correct that the debtor
17 absent Footnote 7 relief has to go forward with
18 the show cause hearing and clear the licenses
19 or else the licenses will be revoked?

20 MR. GENO: Object to the form of the
21 question.

22 THE WITNESS: Yeah, I don't know if
23 that's the case or not. I mean, Bob Keller is
24 probably a better authority on the show cause
25 hearing that I am.

1 But if the debtor was to convoy the
2 licenses to Council Tree or Choctaw and then
3 the FCC was to say, we don't agree with the
4 Second Thursday, we won't approve the Second
5 Thursday, then I guess it would go back to the
6 debtor, and the debtor at that point would
7 probably go through the show cause hearing, but
8 it is also possible that the FCC could revoke
9 the licenses. It is possible that the FCC
10 could decide to grant under the Note 7, a
11 number of the pending transactions and leave
12 that as a path forward.

13 I mean, it is also possible that
14 another buyer, you know, maybe if it is Choctaw
15 or Council Tree or somebody else could amend or
16 correct their -- whatever is the deficiency in
17 their plan in terms of Second Thursday and
18 re-present that -- is that a word? Present it
19 again.

20 So I guess it's kind of
21 hypothetical. It might depend on what reasons
22 why the FCC might say no to a Second Thursday.
23 Like, for example, if they were to say, no,
24 because this one owner, you know, or no,
25 because of this or that, maybe they'd give it a

1 chance to amend or approve, I don't know. It's
2 kind of hypothetical.

3 BY MR. RUHL:

4 Q. It's hypothetical. I understand you
5 don't want to speculate about it.

6 A. I just don't know.

7 Q. What site leases are now valid and
8 have not terminated?

9 A. What site leases? You mean leases
10 from third parties for tower space?

11 Q. Yes.

12 A. As I testified a minute ago, I don't
13 have all that information in front of me, but
14 we produced -- I believe, all of that on the
15 disk, the disk that your client has. I know,
16 for example, that we have site leases in
17 Boston, we have got one in Rehoboth, we have
18 one in Hamden, we've got one in Valhalla.

19 Q. The ones you are listing off,
20 though, they are not terminated. They are
21 still valid?

22 A. It's my understanding that they are
23 still valid and we are being billed. As I
24 mentioned earlier in the Pacific Northwest, we
25 have got site leases, so we have a number of

1 site leases which, you know, remain valid and
2 in operation and, you know, in terms of the
3 plan going forward, I'm not exactly sure how
4 that relates to, you know, my purpose being
5 here to testify on behalf of the plan.

6 I think it sounds more like Mr.
7 Havens is trying to dig for information for his
8 other cases, but we've produced all this
9 information on a CD, which is the CD that I
10 referred to earlier at the beginning where I
11 said you already have that CD. I confirmed at
12 lunch with my colleague, Bob, and your client
13 paid for that CD and we sent him a copy of
14 that.

15 Q. I will say that I conferred with my
16 client at lunch as well, and my understanding
17 -- without going into what was discussed, was
18 that SkyTel has a CD but we are not sure if
19 it's the same CD that you said would be
20 responsive to the document request.

21 A. Right. That is the one I meant.
22 It's the one that relates to the 12 boxes of
23 documents, 27,000 roughly Bates-stamped pages.
24 That's the CD that I meant when I first began
25 this today.

1 Q. The CD related to the 12 boxes of
2 documents?

3 A. Correct. Which is -- there is about
4 27,000 pages in the CD. It is the one that
5 Tendai Richards, the New Jersey attorney for
6 Mr. Havens, paid for that and it was mailed
7 from the copier up to his office for your
8 client. That's the CD I'm referring to.

9 Q. That's the one you were referring to
10 before when you said you had a CD in response
11 to the document request today?

12 A. Right. And the reason that that is
13 germane is that it has in it, you know, things
14 like what you're asking for, you know, site
15 leases, all the information about the assets
16 that are at the sites.

17 Q. Thank you. I'll triple-check to
18 make sure that is the CD we have and then we
19 won't have to worry about the CD at least
20 later.

21 I'm going to get into some questions
22 -- I'm going to specifically try to ask
23 straight from our objections since that is one
24 of the things noticed for today is SkyTel's
25 objections to the plan, so it might be helpful

1 -- if I need you to look at something, I will
2 direct you to it for sure.

3 The plan is one of the things SkyTel
4 objected to. The plan seems to contain what we
5 refer to in our objection as third-party
6 releases, releases of liability of nondebtor
7 parties, and Page 15 -- let's see.

8 Actually Page 31 of the plan. Do
9 you have the plan over there as well? In case
10 you want to refer to it, Page 31 of the plan
11 seems to suggest that the reason -- or that
12 those third-party releases are, first,
13 necessary to implement the plan, and second,
14 necessary to obtain funding from holding
15 Choctaw or Council Tree. That should be on
16 Page 31 of the plan.

17 Why were those third party -- why
18 were those proposed third-party releases
19 necessary to implement the plan?

20 A. I don't recall without seeing -- I'm
21 thinking of Exhibit C and Exhibit D, do you
22 happen to have -- I'm just not sure which
23 release we are talking about.

24 Q. Well, we are talking about a whole
25 bunch of them, releases of nondebtor parties or

1 releases of Choctaw or releases of CTI or
2 releases involving people other than the
3 debtor. And Page 31 of the plan says that
4 those releases -- let me look at it myself.

5 A. I am looking at it.

6 Q. 8, releases. Various releases are
7 called for within the Choctaw offer and the
8 Council Tree offer. Those releases are
9 incorporated by reference in this section of
10 the plan. The leases sought herein are
11 necessary to implement the plan and to obtain
12 necessary funding from holding Choctaw or
13 Council Tree.

14 What I'm wanting to know, if you can
15 tell me, is why those are necessary. Here is a
16 copy of the Choctaw proposal and the CTI
17 proposal.

18 A. Thank you.

19 Q. But there's various releases within
20 those that are also copied in the plan.

21 As an example, you can look at the
22 Choctaw proposal at Page 21. There is a long
23 paragraph that is a release of holding in
24 Choctaw. I wanted to show all that to you as
25 necessary background and just ask you why those

1 releases -- why the debtor considered those
2 releases necessary to implement the plan?

3 A. You know, I don't know.

4 Q. Do you know why the releases are --
5 according to the plan, necessary to obtain
6 funding from holding Choctaw or Council Tree?

7 A. I'm not sure.

8 Q. Are you privy to any communications
9 between the debtor -- let me back up.

10 Are you aware of any communications
11 between the debtor and Choctaw that led up to
12 these releases being included in the plan?

13 A. No. As I testified earlier, the
14 only conversation about releases that I'm
15 familiar with is the one that relates to the
16 DePriest's like personal guarantee, I guess, of
17 some of the secured loans, and as I testified
18 earlier, I believe that it was the view of the
19 Choctaw folks that those -- and they stated
20 this in their filings as well, that once their
21 loans were paid, then the guarantees went away
22 anyways, and so they were sort of -- didn't
23 have any effect.

24 Then I think it was the arguing of
25 the Council Tree folks that those guarantees

1 should be subrogated or assumed or something,
2 you know, become part of the assets that
3 Council Tree would be buying.

4 Q. Those are not the releases I'm
5 talking about.

6 I'm talking about releases of -- for
7 example, Choctaw and holding that are discussed
8 in the Choctaw proposal that I just pointed out
9 to you.

10 A. Okay. Yeah, I don't know why.

11 Q. Are those -- is the release that I
12 pointed to, the release of Choctaw or any other
13 release in the plan, the release of nondebtor
14 parties, are those releases necessary to
15 implement the plan?

16 A. I just don't know.

17 Q. Are they necessary to obtain funding
18 from holding Choctaw or Council Tree?

19 A. Well, it says here in the plan that
20 the releases cites herein are necessary to
21 implement the plan and to obtain necessary
22 funding. I'm just reading Page 31, but I
23 haven't been a part of those conversations with
24 the debtor and Choctaw or the debtor and
25 Council Tree to know why Choctaw and Council

1 Tree would insist on those.

2 Q. You have no idea why Choctaw or
3 Council Tree thinks that those are necessary in
4 the plan?

5 A. No, I don't.

6 Q. Is the debtor willing to go forward
7 with this plan without those releases being
8 included in it?

9 MR. GENO: Object to the form of the
10 question.

11 THE WITNESS: Well, I guess if it is
12 necessary for Choctaw and Council Tree to have
13 for them to participate, then that sounds
14 pretty important. I don't know if we can
15 unilaterally say that we will go forward and
16 have them agree to that.

17 BY MR. RUHL:

18 Q. The plan on Page 26 --

19 A. Okay.

20 Q. -- says under E, first paragraph
21 under E on Page 26 of the plan, which is Docket
22 No. 669 in the bankruptcy case, it says --
23 starting with the second sentence, it says:
24 "However, no objections can be filed as to the
25 Class 1 through 8 claims after confirmation

1 except by the liquidating agent as to claims in
2 Class 8."

3 Why is that provision in the plan?

4 A. I'm not sure.

5 Q. Do you understand what the provision
6 says? Do you understand what it means when it
7 says Class 1 through 8 claims?

8 A. Yes, I think Class 1 through 4 or
9 maybe 5 are the secured lenders, you know, like
10 --

11 Q. It's on Page 9. Class 1 through 5
12 are secured claims. 6 is priority tax claims.
13 7 is the debt financing claim and 8 is
14 administrative expense claims.

15 A. Okay.

16 Q. Now that you see those, I just want
17 to make sure you understand what they were.

18 A. Thank you.

19 Q. Do you understand why the plan says:
20 "No objections can be filed as to Class 1
21 through 8 except by the liquidating agent as to
22 claims in Class 8?"

23 A. You know, I'm not sure. I don't
24 know why it says that.

25 Q. Do you know if any of the secured

1 creditors demanded that provision be in there
2 in order to agree to the plan?

3 A. I don't know.

4 Q. In the second part of our objection,
5 it starts on Page 16, there is a discussion of
6 various provisions which seem to be able to be
7 read to say that if the plan is confirmed, that
8 would somehow keep SkyTel from continuing
9 forward with the pending FCC proceedings
10 SkyTel's involved with.

11 Can you tell me if -- but there is
12 some other provisions that seem to suggest
13 otherwise in the debtor's plan and I'm just a
14 little confused. Can you tell me if it's the
15 debtor's intent for confirmation of the plan to
16 impair SkyTel's ability to continue forward in
17 connection with claims it has asserted in front
18 of the FCC?

19 A. Well, I think it is not within the
20 debtor's authority or the bankruptcy court's
21 authority which Judge Houston has made clear,
22 to have any control over the FCC's ultimate
23 decision-making authority so whether or not the
24 plan is confirmed in the bankruptcy proceeding,
25 I think the judge has made clear that the FCC

1 has its jurisdiction and will have its say
2 overall of this, so to the extent that any
3 claims at the FCC might be impacted by the
4 confirmation of the plan, I just don't see how
5 that could be the case, because I think the
6 confirmation of the plan, there is only one
7 step on a path and its certainly the FCC claims
8 and the New Jersey claim would -- those are
9 separate jurisdictions, separate -- in the case
10 of New Jersey, it's its own court and the judge
11 there could make his or her own decision there.

12 Q. Okay.

13 On Page 20 of the objection, right
14 in the middle of the third full paragraph,
15 right after Footnote 104, it notes that the
16 plan says -- well, the plan provides that once
17 licenses are transferred, the transferee which
18 would be CTI or Choctaw, depending on what
19 happens here, will market and sell those
20 licenses in their "sole and absolute
21 discretion."

22 Is that consistent with your
23 understanding of the plan?

24 A. I guess I don't understand. I mean,
25 it says the plan asserts incorrectly --

1 Q. It's the next sentence, I'm sorry.

2 A. Okay.

3 Q. Let me try to do that better.

4 The plan provides that if these
5 licenses are transferred to Choctaw or CTI,
6 they are going to market and sell licenses in
7 their "sole and absolute discretion."

8 Do you see that?

9 A. Yes.

10 Q. Is there anything in place in the
11 plan or otherwise that would prevent them from
12 -- for example, selling the licenses for a
13 dollar when maybe they are worth a lot more
14 than that?

15 A. Oh, well, let's see. As I
16 understand it, there are other secured lenders,
17 like NRTC, for example. Certainly the folks
18 involved in Choctaw have a security interest in
19 the proceeds so, for example, if Council Tree
20 were to be successful and were to try to sell
21 it for a dollar, I think as Choctaw has said,
22 because it holds a lien over the proceeds, I
23 believe that it could object to that.

24 I think Choctaw also said something
25 to the effect of, you know, Council Tree

1 couldn't engage in single sale, they would have
2 to engage in a sale of everything at least up
3 to the amount of Choctaw's lien for roughly 18
4 million or so, so I guess it would depend which
5 of the two plans was chosen, but this language
6 here about sole and absolute discretion -- I
7 mean, certainly the FCC will continue to have
8 authority over the licenses, you know,
9 regardless of who wins the approval, Choctaw,
10 CTI or whomever. I don't know if I answered
11 your question.

12 Q. I think you did. I think you are
13 saying your understanding is that the secured
14 creditors, among others, might be able to have
15 some say in what the licenses are sold for,
16 even after they are transferred to Choctaw or
17 CTI?

18 A. Yeah, I think that's right. Also,
19 of course, the FCC has a claim. I don't know
20 if it's an unsecured claim, but they would
21 presumably have some financial interest in this
22 as well as any taxing authorities. There is
23 the DIP lender, administrative claims, so there
24 are a number of claims involved.

25 Q. Isn't it true that under the plan,

1 as it's written, the bankruptcy court doesn't
2 have to approve the sale of any licenses as
3 reasonable by Choctaw or CTI?

4 A. I'm sorry. I think the bankruptcy
5 -- as I understand it, the FCC approves the
6 sales of the licenses.

7 Q. So you think that if Choctaw or CTI
8 gets these licenses and start marketing them
9 and selling them, whatever they sell them for
10 would be subject to the approval of the FCC?

11 A. The FCC would definitely have to
12 approve the assignment.

13 Q. What about the price being sold for?

14 A. Well, if the FCC has a claim, I'm
15 not sure how it would resolve its claim. It
16 might be \$6 million or whatever the amount is
17 that they claimed, so I'm not sure how the FCC
18 would handle that. Normally, they wouldn't
19 look at the price and say, we approve based on
20 this price or that price, but if they have a
21 claim, I'm not sure where they sit in the
22 pecking order. It's the same with taxing
23 authorities. I'm just not an expert on how all
24 that would work.

25 Q. Does the plan itself provide for any

1 approvals being required as to the price that
2 those sales go for?

3 A. I don't recall seeing that. The
4 plan itself.

5 Q. I'm trying to just nail down what
6 their sole and absolute discretion means,
7 because that sounds like they can sell it for
8 any amount they want to sell it for.

9 A. You know, what page on the plan was
10 that on?

11 Q. It is on Page 10 of the plan.

12 A. 10, thank you.

13 Q. Sorry. I can probably point you to
14 the right place if you have a question.

15 A. Page 10 on the plan?

16 Q. Yes. It's the second paragraph
17 under Subheading 1.

18 A. Okay, thank you.

19 Q. It says: "Choctaw will market and
20 sell the FCC spectrum licenses in its sole and
21 absolute discretion, subject only to FCC's
22 regulatory approval of all sales."

23 So under this provision of the plan,
24 isn't it correct that the price that Choctaw
25 chooses to sell licenses for isn't subject to

1 anyone's approval?

2 A. Well, I guess I'm not sure how that
3 would interplay with the other secured lenders
4 or other secured parties.

5 Q. I think the answer is in the -- in
6 its sole and absolute discretion, isn't it?

7 A. Subject only to -- Choctaw shall
8 distribute all revenue, products and proceeds
9 in its discretion to Choctaw for final and all
10 distribution -- for the claims -- included with
11 the revenue products --

12 Well, I think down below, they try
13 to answer it by saying -- maybe, that their
14 rights to distribution are subordinate to the
15 rights of the other parties as follows, and
16 then they list some folks like the
17 administrative expense claims, 600,000 to the
18 unsecured creditors prepayment, little C there
19 is 600,000 administrative. Then in addition to
20 the secured creditors claims, talk about their
21 monthly accruals.

22 So I think, you know, what they are
23 getting at is that they will pay folks in this
24 order, so that their right to receive money is
25 subject to -- for example, you can see here on

1 Page 11 where it says Chris Dupree, the owner
2 and holder of Class 4 claims, shall receive
3 distributions from Choctaw on account of his
4 Class 4 claims on a pari-passu basis with the
5 secured creditors.

6 So, for example, any money that they
7 would bring in, they would need to share with
8 NRTC, with Chris Dupree on a pari-passu basis.
9 Looks like tax claims.

10 So I guess in theory, could they
11 sell for a dollar? Maybe they could, but they
12 would have to split that dollar up among about
13 six or seven unhappy people it looks like. I'm
14 just being facetious.

15 Q. Page 29 of the plan in the second
16 full paragraph, I assume you've reviewed this
17 since you're testifying on behalf of the debtor
18 here on these questions, but it says, among
19 other things, that the debtor is of the view
20 that claim -- let me start back.

21 It says: "In the event the FCC
22 grants and approves application of the Second
23 Thursday Doctrine to the debtor or Choctaw/CTI
24 or any other corporate entity, the debtor is of
25 the view that claims pending in the FCC

1 asserted by the Havens' entities will be
2 consumed in that litigation, when combined with
3 approval of the plan in this court."

4 Can you tell me why -- what -- the
5 basis of their view?

6 A. I was looking for where you were
7 reading. Did you say it's in the second full
8 paragraph?

9 Q. Second full paragraph, Page 29.

10 A. "The court has lifted the stay. The
11 court has set a claim. In the event the court
12 approves the plan?"

13 Q. That's right. It starts in the
14 second full paragraph: "In the event the court
15 approves the plan."

16 A. "Then subject to proceedings before
17 the FCC and in the event the FCC grants and
18 approves the application of the Second Thursday
19 Doctrine, the debtor is of the view that claims
20 pending in the FCC asserted by the Havens'
21 entities will be as consumed in that litigation
22 when combined with approval of the plan in this
23 court."

24 Q. I am just asking what the basis of
25 the debtor's view is. It says: "The debtor is

1 of the view that."

2 Why is the debtor of the view that?

3 A. I understand. Well, the first part
4 of the sentence where it says: "In the event
5 the court approves the plan then" -- and then
6 this little qualifier, "subject to proceedings
7 before the FCC," there are -- as we mentioned
8 earlier, there are a number of proceedings
9 before the FCC of which one is the -- what do
10 you call it, the hearing? The show cause
11 hearing?

12 Q. Right.

13 A. So I think it's trying to -- this
14 little qualifier where basically the debtor is
15 saying: "In the event the FCC grants and
16 approves application of Second Thursday,"
17 Second Thursday could apply to the claims that
18 are pending in the FCC asserted by the Havens'
19 entities, but it might not, so subject to
20 proceedings before the FCC -- so for example,
21 would Second Thursday apply to the hearing as
22 it relates to what we call Issue G, which is
23 the site construction and operation issue. It
24 might, it might not. You know what I mean?

25 Q. I do understand what you are saying

1 there. Thank you. I missed the subject to the
2 proceedings before the FCC part.

3 A. That's okay.

4 Q. Page 25 of the objection brings to
5 mind some questions. I'm not sure if they are
6 exactly stated on Page 25, but I will point you
7 there.

8 I want to ask you what the debtor's
9 opinion is of the value of the licenses
10 currently?

11 A. Yeah. As I testified earlier in
12 Judge Houston's chambers, might have been in
13 September, and I believe I've said the same
14 thing to Pam Kane in the deposition I gave a
15 few weeks ago and I know we don't have the
16 transcript yet, but it's my opinion that the
17 value of the licenses is zero at this point,
18 because the company can't sell and hasn't been
19 able to sell any of its licenses.

20 Something that you cannot sell has
21 no value. Once you can sell it, then it might
22 begin to have some value and, you know, in this
23 case certainly, any sale of licenses would
24 require FCC approval and the FCC might also put
25 conditions on the licenses by going forward,

1 so, you know, it's a situation where there is
2 value in the licenses at some point in time.
3 Right now, it's pretty hypothetical because Mr.
4 Havens has clearly stated in Exhibit 3 that he
5 intends to litigate anybody -- against anybody
6 who owns the licenses for a number of years, if
7 that is not him and he is not the owner.

8 Q. So the value of the licenses at any
9 point in time in the relatively short future is
10 purely hypothetical?

11 A. Most of these contracts and most
12 buyers require a final order and Mr. Havens has
13 been unwilling to drop protests in the majority
14 of cases, if not all cases, against the
15 assignment or sale of the licenses. So
16 regardless of whether Choctaw, Council Tree or
17 some third party that is not Mr. Havens ends up
18 with the licenses, it is hard to put a value on
19 something which is going to be subject to
20 endless litigation and the cost of litigation,
21 both in time and money.

22 Q. At this point, that kind of value
23 would be purely hypothetical?

24 A. I mean, you could put numbers around
25 it, but if you have something that you can't

1 sell, then in my opinion, it's not got value.

2 Q. And at this point -- okay, I think I
3 understand.

4 The disclosure statement -- it's the
5 third amended disclosure statement, Docket No.
6 668 in the bankruptcy case. I just handed you
7 a copy of it.

8 On Page 13 -- I'll give you a second
9 to get there.

10 A. Okay.

11 Q. Under assets of the debtor, starting
12 with the second sentence, after the first
13 independent clause, read through there. As I
14 read it, it says the estimated current market
15 values of the debtor's assets.

16 Well, I'm sorry. Let me start
17 again. I'm getting tired.

18 Isn't it right that in this
19 paragraph -- this paragraph says that the
20 debtor's management's estimation of the value
21 of the debtor's assets is set forth in Exhibit
22 A to the third amended disclosure statement.
23 It says that, right?

24 A. Where it says: "The amounts listed
25 with respect to the description of the assets

1 unless otherwise noted are estimations that may
2 not reflect the actual value of those assets,
3 but do reflect the -- what purports to be
4 debtor's management's estimation of the value
5 of the assets?"

6 Q. Yes.

7 A. And then Exhibit A?

8 Q. Yes.

9 A. Is this the \$44 million question?

10 Q. Exhibit A is the debtor's schedules,
11 which I didn't give you. I'm sure you probably
12 remember that the debtor's schedules list the
13 value of the licenses at \$45,200,000?

14 A. I remember testifying about this in
15 court last month, yes.

16 Q. Doesn't the disclosure statement say
17 that that \$45,200,000 reflects what purports to
18 be the debtor's management's estimation of the
19 value of the assets?

20 A. That is what I recommend that -- or
21 I recall that is what the exhibit says.

22 Q. And that is what the disclosure
23 statement says, correct?

24 A. Yeah, and I recall testifying to
25 that. I didn't agree with that and that was

1 something that I didn't prepare.

2 Q. I'm going to turn your attention to
3 Footnote 174 in the objection.

4 A. 174?

5 Q. Yeah. It's on Page 37.

6 Because I have not given it to you
7 yet, I will give you a copy of the Exhibit B to
8 SkyTel's objection which is referenced in
9 Footnote 174.

10 On page -- Exhibit B is a transcript
11 of proceedings before the FCC on June 4, 2012.
12 And in it, Mr. Keller, who is counsel for the
13 debtor in the FCC proceeding says: "I will
14 guarantee you that if there is a Second
15 Thursday grant in this case, a Second Thursday
16 approval, then yes, then the licenses are going
17 to be worth a heck of a lot more than they are
18 now."

19 I'll show that to you. Do you agree
20 or disagree with Mr. Keller's statement there?

21 A. Well, with respect to Mr. Keller,
22 who is a good guy and sitting right here, I
23 have to say I'm sorry, I disagree. As I
24 testified earlier and as Mr. Havens has made
25 abundantly clear in his Exhibit 3 here today,

1 regardless of whether or not there is a Second
2 Thursday grant, he is going to continue to
3 appeal and protest, you know, both that grant,
4 any bankruptcy confirmation and any individual
5 sales, so until the FCC can sort of grant
6 finality in one or more proceedings, you know,
7 something that you can't sell just doesn't have
8 value and so I respectfully disagree with Mr.
9 Keller.

10 Q. Is the debtor ever going to be able
11 to sell these licenses? Can you hand that back
12 to me?

13 A. Yes. You know, in some situations,
14 there may be folks who are willing to waive
15 finality. There may be -- and when I say
16 "folks," I mean buyers. There may be contracts
17 in the future where perhaps buyers agree to
18 move forward without finality. But that is
19 kind of hypothetical.

20 So then as I mentioned earlier,
21 there is also a possibility of perhaps the FCC
22 saying under Footnote 7, hey, you know, this is
23 a critical public safety kind of need and we
24 will go ahead and grant that approval.

25 I don't know if I answered your

1 question. I apologize. I'm rambling.

2 Q. I think we are both rambling. I
3 know we are both doing our best. I appreciate
4 it.

5 Page 26 of the objection references
6 Page 25 of the plan. Without quoting anything,
7 it essentially -- my understanding of the plan
8 as proposed by the debtor is, if the FCC
9 doesn't ultimately approve the transfer, the
10 licenses will remain with the debtor under this
11 plan and then the debtor will use every
12 reasonable effort to monetize those assets
13 through sales or other dispositions, and I want
14 to ask you to explain what that means, what the
15 debtor would do in the event the licenses
16 remain with the debtor and the debtor is going
17 to "use every reasonable effort to monetize
18 those assets."

19 A. Yeah, that's a good question,
20 because it kind of -- it creates a bit of a
21 hypothetical because as I mentioned earlier, I
22 guess it depends on the reason why the FCC
23 would not approve the -- what do you call it,
24 the Second Thursday or, you know, the transfer
25 to Council Tree or to Choctaw.

1 So if for example, the FCC were to
2 say, we don't approve, but, you know, fix your
3 structure or we don't approve but we would
4 approve this type of owner, you know, then that
5 would provide one path forward for the company.

6 Another thing that I understand the
7 company could do, the debtor could do in that
8 instance, is perhaps go through a Chapter 7
9 liquidation, you know, where basically, I guess
10 it fires all the employees and just goes
11 through kind of a fire sale, but in my view,
12 that would bring a lot less money to the
13 creditors than more of an orderly process going
14 forward.

15 So, you know, there is a couple
16 things that I think the debtor could do, but
17 because the debtor doesn't have any money,
18 cash, if Council Tree and Choctaw are not in
19 the picture, the debtor would need to find
20 somebody else to fund the operations which also
21 creates a problem, so...

22 Q. At this point, it's too hypothetical
23 to tell?

24 A. It's hard to tell.

25 Q. Fair enough.

1 In the plan, the debtor proposes to
2 retain its interest in Critical RF. Are you
3 familiar with what I'm referring to?

4 A. Yes, sir.

5 Q. And the plan says: "The debtor
6 would operate Critical RF and provide the
7 resources nonmonetary and noncash necessary to
8 bear the business to profitability." I'm on
9 Page 28 of our objection, quote, in the plan.

10 A. Thank you.

11 Q. The debtor will "operate Critical
12 RF" -- it's in brackets, "and provide the
13 resources (nonmonetary and noncash) necessary
14 to grow the business which is Critical RF to
15 profitability."

16 What resources is the debtor
17 referring to there?

18 A. Yes, I believe that is primarily the
19 time and effort and knowledge of Tim Smith.
20 Robert Tim Smith is the person who has been
21 essentially running Critical RF.

22 As I testified earlier, I stopped
23 working there in 2009 and Tim Smith has been
24 really running that operation, so his time
25 would be what is referred to as the nonmonetary

1 resources.

2 In addition, I believe that, you
3 know, Critical RF has IP, intellectual
4 property, which could be a value if it were
5 correctly pursued and developed further. That
6 might also be something, you know, which would
7 be I guess a nonmonetary, noncash resource.

8 Q. Does Critical RF -- or does the
9 debtor have any firm commitments from anyone to
10 provide operating capital for Critical RF to
11 continue to operate?

12 A. I don't believe so, no. I think
13 instead, my understanding of it is that Sharon
14 Watkins and Tim Smith are both in the Indiana
15 office, and this is the office where Tim works,
16 you know, on the Critical RF solutions and
17 tries to fill what customer orders there are or
18 to respond to any demands or whatever for
19 business for Critical RF.

20 But that is an office which is a
21 Maritime Communications office. You know, Tim
22 and Sharon remain on the payroll of Maritime
23 Communications so to the extent that he is sort
24 of doing two jobs, he really is. So it would
25 be my hope and expectation that Tim would

1 remain employed by Maritime because he has been
2 to all the sites. He knows all the information
3 about equipment and the like, and Sharon, as
4 well, is a good support resource.

5 So it would be my hope that they
6 would both be able to provide their time as
7 needed to help grow Critical RF to a point
8 where it's self-sustaining.

9 Q. Okay. I know you said firm
10 commitments for operating capital had not been
11 obtained. Has the debtor and/or Critical RF
12 attempted to obtain financing of any sort to
13 continue to operate Critical RF?

14 A. I don't know. I don't think so.
15 Critical RF as I may have testified recently
16 with the FCC, I believe Critical RF brought in
17 around \$100,000 in revenue and probably lost,
18 all told, about maybe 30 or \$40,000 in the last
19 year, so it is not the kind of business that
20 most lenders would want to lend, you know,
21 money to because it is not what you might call
22 cash flow positive.

23 Q. You said they lost 70 and brought in
24 a hundred?

25 A. No. I think they -- in fact, it

1 might even be in your objection. It's
2 somewhere. They brought in around \$100,000 in
3 revenue in the last 12 months is my
4 understanding of Critical RF, but lost -- but
5 spent about 140,000. So they've lost about
6 40,000.

7 Q. I misheard you.

8 A. No worries.

9 But to answer your question about,
10 you know, have they gone out to borrow money or
11 whatever -- yeah, here it is at the top of Page
12 28, they lost about 48,000. It's not a
13 credit-worthy kind of company where you can go
14 and try to borrow money because it's losing
15 money.

16 Its main value, I think, could be in
17 the intellectual property and simply in the
18 business context that Tim has, that he is
19 pursuing for that entity.

20 Q. The disclosure statement on Page 15
21 says the debtor "believes Critical RF has
22 enough of a future to retain its stock as part
23 of the debtor's assets."

24 It doesn't really matter about the
25 quote. It says: "The debtor believes Critical

1 RF has enough of a future that the debtor wants
2 to retain its stock as part of its assets."

3 I just want to ask you: What is the
4 basis of the debtors -- unless you've already
5 told me, what is the basis of the debtor's
6 belief?

7 A. When I left the company in March of
8 -- when I left Critical RF in the day-to-day
9 role in March of 2009, we were -- Critical RF
10 was around \$300,000 in annual revenue, so it
11 had grown from, you know, less than \$100,000 in
12 revenue two years earlier, so it was on a nice
13 path to growth.

14 I think it can return to that path.
15 I also think that the intellectual property
16 could have some real value. We talked with
17 Qualcomm and others about licensing the
18 technology because these patent applications
19 have been filed around the world. It could
20 have some real value.

21 Basically, what the technology does
22 is allow you to talk from an iPhone or an
23 Android device or a BlackBerry to one another,
24 using a two-way radio-type of conversation over
25 the cellular network, but also to talk to

1 two-way radios. So it's an interoperable
2 solution.

3 And the reason why I think it could
4 have some real value is -- as the FCC and
5 others in the public safety community focus on
6 the 700 megahertz build-out of speculum, it's
7 clear to me that a lot of local jurisdictions
8 will never have the amount of money necessary
9 to build a brand new radio system in 700
10 megahertz, but they will want to participate in
11 that nationwide network, and the best way for
12 them to participate in my view is to buy
13 devices which are the kind of devices that
14 Critical RF makes. It looks like a smoke
15 alarm. You put it in your radio system. It
16 plugs your radio system up to Internet
17 protocol, makes it radio over IP, so then you
18 can talk on your radio system which is a Legacy
19 radio system without spending millions of
20 dollars for a new radio system.

21 And let's say that I'm the state
22 police and I have this brand new multi-million
23 dollar 700 megahertz system. If we need to
24 talk to one another once in a while, you can
25 use the Critical RF solution to interoperate

1 with me when you need to. But you don't need
2 to spend millions of dollars, so I think in
3 today's budget-stressed world, especially state
4 and local budgets, I think that there is going
5 to be an opportunity for Critical RF in that
6 particular 700 megahertz market.

7 Which, you know, some folks think
8 it's a negative, the fact that they're building
9 out that 700 megahertz system. It means that,
10 you know, some folks say, oh, maybe it means
11 Critical RF is less important.

12 I have a different view. I think it
13 means it has a value, conscious state or local
14 municipality, I'm going to go with that
15 solution because I don't want to spend millions
16 of dollars to build a new system when my radio
17 system works perfectly fine and you and I don't
18 need to interoperate except once in a while
19 when there's a big emergency, then I can use
20 the Critical RF solution.

21 The rest of the time, I don't want
22 you listening to me and I don't want to listen
23 to you. You're a police, I'm a local fire guy
24 or whatever. Stay out of my way. That is kind
25 of their approach. It's a long way of

1 answering your question.

2 So I do believe there is value
3 there. I just think it's going to take time.
4 It can return to its former level and the peak
5 could have some real value.

6 Q. Under the plan, the debtor says it's
7 going to monitor and assist in seeking FCC
8 approvals including under Second Thursday.

9 Can you tell me how the debtor will
10 be monitoring and assisting that effort?

11 A. Not really. I think it is just kind
12 of general. I mean, I think once the -- once
13 one of the two buyers is approved and they
14 filed their application for a Second Thursday
15 treatment, I believe that Bob Keller will
16 remain involved as the debtor's counsel.
17 Certainly provision of any background
18 information. Any documents that are requested
19 by the FCC, any testimony. I guess that would
20 sort of be the general role of supporting the
21 transaction that I believe the debtor would
22 undertake.

23 Q. The plan also says that the debtor
24 will continue to prosecute objections to claims
25 and pursue litigation after plans.

1 I'm assuming in these questions, the
2 plans is going to be confirmed. I'm certainly
3 not admitting that it's going to.

4 But the plan says the debtor will
5 continue to prosecute objections to claims and
6 pursue litigation post-confirmation.

7 I just want to ask what claims and
8 what litigation are being referred to there to
9 the extent it is known at this point?

10 A. Yes, thank you.

11 I believe that the New Jersey
12 litigation will continue as I mentioned
13 earlier, you know, any FCC decision on that
14 Second Thursday or whatever would not take away
15 the authority of the New Jersey court, and so
16 the debtor would continue to defend that claim.

17 In addition, there may be other
18 claims, like for example, if any confirmation
19 plan is appealed in the bankruptcy process, so
20 there could be additional future claims, that
21 the debtor may need to defend itself against,
22 and then there could be other matters, you
23 know, for example, there might be claims that
24 are filed. I believe that the debtor would
25 oppose, you know, for example, any effort by

1 the DePriests to collect, for example, any
2 claims. I think they are classified as Class
3 10 or whatever, anyways. So there might be
4 claims which would be, you know, objected to by
5 the debtor.

6 Q. Thank you.

7 Is -- any other claims or litigation
8 that you are aware of at this point?

9 A. Let's see. I mentioned the New
10 Jersey litigation. There are a number of items
11 at the FCC, of course. The bankruptcy matter.
12 I can't think of any others right now.

13 Q. Does the debtor or debtor in
14 possession intend to pursue any claims that the
15 debtor might have against any of the DePriests
16 in connection with the actions described in the
17 hearing designation order?

18 A. Not to my knowledge.

19 Q. Do you know -- has there been any
20 discussion of that?

21 A. Well, the debtor doesn't have any
22 money, so really, our monthly obligations are
23 closer to \$90,000 but the DIP loan is only
24 50,000, so already we are behind on tower rents
25 and things which are due, so to go and spend

1 money to litigate against anybody, whether it's
2 the DePriests or Mr. Havens or anybody else --
3 to go on what you might call sort of proactive
4 litigation or the like, it is just not been
5 something that's really gathered much attention
6 at all, so...

7 MR. RUHL: I need a break.

8 (A short recess was taken.)

9 BY MR. RUHL:

10 Q. Mr. Reardon, the plan says that the
11 debtor believes that the plan is feasible.

12 I want to ask you: What is the
13 basis for -- tell me all the bases for the
14 debtor's statement that this plan is feasible?

15 A. Is that page -- do you know what
16 page that is on?

17 Q. I think it's Page 19.

18 A. Thank you.

19 First amended plan of
20 reorganization?

21 Q. No, it's the disclosure statement,
22 Page 19.

23 A. I have got the wrong one. Page 19.

24 Q. Page 19 of the disclosure statement.

25 A. Thank you.

1 Q. Says among other things in Paragraph
2 2: "The debtor believes the plan is feasible.
3 Although feasibility depends upon, among other
4 things, the successful Second Thursday approval
5 by the Federal Communications Commission."

6 A. Yes.

7 Q. My question is -- I would like you
8 to tell me what the bases of the debtor's
9 belief that the plan is feasible are?

10 A. Well, yeah, sure. First of all,
11 both Choctaw and Council Tree have indicated
12 that they would essentially pay the burn rate,
13 which is roughly \$90,000 a month, whether that
14 is a monthly accrual in the place of Choctaw or
15 Council Tree would, you know, pay equivalent of
16 the DIP financing, so to the extent that the
17 licenses need to be operated, employees need to
18 be paid, site rents need to be paid, licenses
19 need to be marketed for sale and/or lease or
20 deployment, the short term cash situation would
21 seem to be resolved by both Choctaw and Council
22 Tree's plan.

23 So from the short-term perspective,
24 it would be feasible. From what I might call
25 the medium-term perspective, both Choctaw and

1 Council Tree in the debtor's view are eligible
2 for Second Thursday treatment by the FCC. We
3 believe that, you know, neither Choctaw nor
4 Council Tree would -- neither one would be
5 denied the Second Thursday approval, so from
6 that standpoint, we believe that the character
7 issues of Maritime and the DePriests would be
8 overcome in the Second Thursday precedent, so
9 that either Choctaw or Council Tree would be
10 viewed as eligible licensees and both have
11 indicated a willingness to then pursue -- not
12 just the \$10 million of existing transactions
13 which would allow the payment of some of the
14 secured debt and other debts, but both have
15 indicated a willingness to continue to market
16 the spectrum and to essentially pay off all the
17 debts including the unsecured creditors.

18 So from a standpoint of feasibility,
19 the debtor does believe that it has got two
20 good choices, two solid proposals and the plan
21 is feasible from that perspective. Achievable,
22 let's say.

23 Q. Any other basis for the debtor's
24 belief that the plan is achievable?

25 A. There might be -- after five hours

1 of deposition. Any other reasons why it might
2 be achievable? Let's see.

3 I mentioned the fact that the two --
4 Choctaw and Council Tree are putting in money.
5 They both seem to be in the debtor's view
6 eligible to be licensees. Certainly the FCC
7 will make that decision.

8 Council Tree has a background in
9 communications. Choctaw has indicated that it
10 would employ me, and both have very competent
11 FCC counsel. Michele Farquhar for Council
12 Tree, and Choctaw has Mary O'Connor, so they
13 both seem to be serious. In the case of
14 Choctaw, it is already, you know, the Southeast
15 Commercial folks, finance people have already
16 put up the DIP funding and the secured lenders
17 who are Choctaw stockholders, if you will, have
18 already put a lot of money into the company in
19 forms of their -- in terms of their loans to
20 the company over the years.

21 So financially, Choctaw seems to be
22 capable of making that type of commitment as
23 it's shown by putting about, say a million or
24 two or so in DIP financing through Southeastern
25 Commercial Finance, and Council Tree, for its

1 part, again, they seem to be financially
2 astute. They and some of their partner
3 investors, like Catalyst, seem to be -- we
4 might call sophisticated people who have been
5 involved in transactions of a magnitude in the
6 tens of millions and certainly more than that.

7 So from a financial standpoint, both
8 Choctaw and Council Tree seem to be able to put
9 their money where their mouths are, to use that
10 colloquialism.

11 Q. Have either of them, Council Tree or
12 Choctaw, have -- have either of them lined up
13 the funding necessary to operate
14 post-confirmation?

15 A. Well, I don't --

16 Q. In connection -- I'm asking
17 specifically in connection with their
18 obligations under the plan.

19 A. Well, what I know is what I read in
20 their plans. Council Tree seems to say that
21 post-confirmation on the effective date of
22 their plan, that they would put \$4 million in,
23 but I think the effective date for them is the
24 date when the FCC issues the -- approves the
25 orders of those \$10 million of transactions by

1 final order, so whether they have lined that up
2 in advance or whether that ten million would
3 come in and then they would sort of funnel four
4 million of that back around, I'm not sure. So
5 I'm not sure if they've lined up their
6 financing or not.

7 Choctaw, similar situation. They
8 have put in money in the past. Obviously, they
9 are secured lenders. Whether they've lined up
10 financing or not, I'm not privy to their
11 conversations with whoever their backers are.

12 Q. So you don't know if either of them
13 have lined up financing at this point?

14 A. I don't know for post-confirmation.
15 I don't know if either one has lined up
16 financing at this point.

17 Q. Southeastern Commercial Finance is
18 part of Choctaw, correct? I'm sorry. Let me
19 back up. They are not.

20 Patrick Trammell is part of Choctaw,
21 right?

22 A. Yes. That's my understanding, yes.

23 Q. He is involved in Southeastern
24 Commercial Finance as president or some similar
25 capacity?

1 A. He has some role with them. I
2 testified earlier I'm not sure if he's
3 president or exactly what his role is with
4 them.

5 Q. Donald DePriest held a 10 percent
6 interest in Southeastern Commercial Finance
7 when the bankruptcy was filed, right?

8 A. I think that is accurate. I read
9 the Council Tree filing, in which it produced
10 the chart and indicated the amount of interest
11 that Don DePriest had in Southeastern
12 Commercial. I believe in the Choctaw discloser
13 -- or in their plan, they also said what the
14 percentage amount was, 10 or 11 percent maybe,
15 and then that was cancelled in exchange for
16 some -- cancellation of debt of some 400,000
17 or -- it's in the documents. I can't remember
18 the exact numbers.

19 Q. What is in the documents, it appears
20 -- it's correct as far as you know?

21 A. As far as I know, it's correct.

22 Q. Bear with me, because I'm looking at
23 some questions that I don't need to ask anymore
24 because you've already answered, so I'm trying
25 to ferret this out.

1 A. Sure.

2 Q. Does the debtor have any idea how
3 long the Second Thursday process could take if
4 the plan was confirmed?

5 A. Well, what I have been told by our
6 esteemed counsel over here, Bob Keller, is that
7 it could be, you know, nine months, six months,
8 somewhere in that time frame.

9 When I'm not clear of, however, is
10 what happens if the plan is confirmed to, you
11 know, the bankruptcy process or court for
12 either Choctaw or Council Tree and then if
13 that's appealed, will that appeal need to be
14 resolved before its Second Thursday can move
15 forward? Because if that happens in that
16 order, then it could add extra time, so the
17 debtor's view of it right now, is that it would
18 probably be somewhere between six and nine
19 months from confirmation of the plan at the
20 bankruptcy court until the Second Thursday
21 decision is reached at the FCC one way or the
22 other.

23 Q. Unless for some reason, an appeal
24 puts that off?

25 A. Right.

1 Q. Does the debtor have any view on how
2 long it could take or would likely take Choctaw
3 or CTI to market and sell the debtor licenses
4 to fund the plan?

5 A. How long -- I'm sorry, it would
6 take?

7 Q. If at some point, Choctaw and/or CTI
8 get the licenses transferred to them, does the
9 debtor have any idea how long it would likely
10 take them to market and sell enough licenses to
11 pay off the debt?

12 A. No.

13 Q. Do you have any?

14 A. Part of that really involves, you
15 know, future buyers, would they agree to close
16 transactions without a final order. Would Mr.
17 Havens do what he has threatened to do and
18 continue to oppose any transactions, you know,
19 between Council Tree or Choctaw, whoever the
20 licensee would be and the buyers, so...

21 Q. I've asked you another hypothetical
22 and speculative question.

23 A. Yes, sir.

24 Q. Sorry.

25 A. That's okay.

1 Q. Under the -- there is no -- under
2 the plan, based on my reading anyway, correct
3 me if I am wrong, there doesn't appear to be
4 any time limit imposed on Choctaw or Council
5 Tree for obtaining Second Thursday relief. Is
6 that an accurate statement?

7 A. Well, I believe it is accurate for
8 Choctaw. I don't remember seeing a time limit.
9 I think what Council Tree said in their plan is
10 that they would agree to fund post-confirmation
11 for -- I think six months of the -- sort of the
12 burn rate, if you will, and so, you know, once
13 that six months is up, I'm not sure if then
14 they would, you know -- what happens after that
15 six months is up basically, because if the
16 company has, you know, if the plan has been
17 confirmed and Council Tree is chosen and they
18 go forward and six months arrives and Second
19 Thursday still hasn't been approved or
20 whatever, you know, what happens at that point.
21 I think there is a difference between those
22 two.

23 Q. I guess maybe CTI could decide to
24 continue or bail, okay.

25 A. Probably.

1 Q. Under the plan as I read it, is
2 there any time limit imposed on how long
3 Choctaw or CTI would have to close the approved
4 asset purchase agreements and market and sell
5 licenses sufficient to pay off the debt in the
6 event Choctaw or CTI gets the licenses
7 transferred to them?

8 A. You know, I don't recall seeing a
9 time limit. If there is one, I missed it.

10 Q. I didn't see one either.

11 A. You didn't? Yeah, I don't recall
12 seeing one.

13 Q. What did the debtor pay in cash or
14 noncash consideration to obtain the licenses it
15 got from Mobex Network Servicing, LLC?

16 MR. GENO: Object to the form of the
17 question.

18 You can answer.

19 THE WITNESS: Yeah. I think it is
20 in the -- it might be in your objections
21 somewhere.

22 BY MR. RUHL:

23 Q. I'm not sure I was 100 percent
24 positive. I saw a document that suggested that
25 there was a \$6 million cash component?

1 A. Yes.

2 Q. But I didn't know if there was other
3 consideration that was noncash.

4 A. No. There was not. It was 6 or 6.1
5 million in cash for the asset purchase
6 agreement between Maritime Communications and
7 Mobex Network Services Company.

8 Q. There was no other consideration
9 other than that cash component?

10 A. That's correct. There is no other
11 consideration, so it was 6 or 6.1 million.

12 Q. Was that all paid? The 6 or 6.1
13 million, was it paid?

14 A. Yes. The deal closed December 30 of
15 2005 and the cash was all paid.

16 Q. Okay.

17 A. Some of that cash was paid to tower
18 owners and others who had, you know, leases
19 that Maritime wanted to get assigned. So in
20 other words, if you owe me -- if I owe you \$10,
21 but I want you to assign the lease to the
22 buyer, I will have the proceeds paid to you so
23 that's why you will see some of the documents
24 are a check from Maritime Communications'
25 attorney to, you know, a tower company like

1 Crescent Real Estate. That was part of the --
2 that came out of the six million total.

3 Q. Did Mobex Network Services, LLC, or
4 any other Mobex entity get any interest in
5 Maritime as part of that sale?

6 A. No. That was an asset sale, so it
7 was cash for licenses and other assets, like
8 the towers which were owned by Mobex and were
9 transferred to Maritime.

10 Q. As I appreciate it from the
11 employment agreement that I have seen, and
12 without telling them -- I'm muting it because I
13 don't know if this is confidential or not, that
14 part of your employment agreement is [REDACTED]
15 [REDACTED]
16 [REDACTED] is that
17 right?

18 A. Yes, I think you are right, that
19 might be highly confidential. Well, there were
20 a couple employment agreements --

21 Q. Sorry. We are back on.

22 So that is right. My question to
23 you is: Was that negotiated as part of the
24 sale of licenses from Mobex to Maritime?

25 A. Let's see.

1 MR. RUHL: Let me explain to the
2 people on the phone. I muted it for a second
3 because I asked Mr. Reardon something that is
4 highly confidential. He answered it and now we
5 are back on.

6 BY MR. RUHL:

7 Q. So go ahead.

8 A. Can you ask the question again?

9 Sorry.

10 Q. That agreement where you get that
11 percentage, was that negotiated as part of the
12 sale of licenses from Mobex to Maritime?

13 A. No.

14 Q. Was that afterwards?

15 A. Yes.

16 Q. Do you know who the limited partners
17 are in the S/RJW Partnership LP entity?

18 A. I don't. I think it has been filed
19 with the FCC. But I don't.

20 Q. Now we talked about how the debtor
21 obtained the site-based portion of its licenses
22 from Mobex Network Services, LLC, in a deal
23 that closed December 30, 2005, and obtained
24 those licenses for approximately 6 or
25 \$6.1 million cash that was paid.

1 Is it correct that -- isn't it
2 correct that Maritime obtained a geographic
3 portion of its licenses through FCC auction for
4 \$5,865,000?

5 A. I'm not sure of the exact amount
6 that was ultimately paid for those geographic
7 licenses, because I believe that then there was
8 a -- the gross bid was perhaps around \$8
9 million and then there was originally a 35
10 percent discount, so it was around 5 --
11 whatever your number was. And then there was
12 an additional amount that was paid of roughly
13 \$800,000 which was the difference between the
14 very small business and small business, so the
15 total --

16 Q. Went from 35 percent bidding credit
17 to 25 percent?

18 A. So the total compensation paid to
19 the FCC to date has been roughly maybe 6 and a
20 half to \$7 million.

21 Q. If I told you that in the hearing
22 designation order, it said that it was
23 5,083,000 paid in 2005 and then an additional
24 782,000 paid as a result of the credit going
25 from 35 percent to 25 percent in 2006, does

1 that sound accurate?

2 A. If it's in the hearing designation
3 order, it's probably accurate. What do those
4 two total up, about 6 or 7 million?

5 Q. Total up to 5,800-and-something
6 thousand dollars.

7 A. Then there could have been interest
8 on the payment that was made in, you know, the
9 additional 700,000 or whatever. I think there
10 was an also interest component on that because
11 if recollection serves me right, it would have
12 been a little more than 700 -- it would have
13 been more like 800,000, so somewhere in that
14 ballpark. But that would make sense. Because
15 if the gross price of the licenses was roughly
16 \$8 million --

17 Q. The gross was 7,820,000.

18 A. And then if you take 75 percent of
19 that, whatever that comes out to, 6 million or
20 whatever.

21 Q. Right around there.

22 A. Right around there.

23 Q. I just wanted to make sure I had my
24 facts straight.

25 I think the plan generically says

1 that if there are any taxes, the taxes will be
2 paid but does the plan provide or have a
3 provision providing for payment of any
4 potential capital gains tax liability that the
5 IRS may impose post-confirmation?

6 MR. GENO: Object to the form of the
7 question.

8 THE WITNESS: Does that mean I
9 should answer it?

10 BY MR. RUHL:

11 Q. It means you can answer.

12 You can answer any questions unless
13 he tells you not to, and then maybe even then.

14 A. Does the plan call for payment of
15 taxes? I believe that it --

16 Q. Does the plan contemplate or provide
17 for the payment of any capital gains tax
18 liability that might be imposed by the IRS
19 post-confirmation?

20 A. Yeah, I believe -- and I may be
21 wrong on this, but I believe that the plan says
22 that -- looking for it where it lists the
23 classes. Isn't there a class for tax?

24 Q. There is a class -- Class 6 is for
25 priority tax claims.

1 A. Okay.

2 Q. That refers to claims that have been
3 filed in the case like for the ad valorem taxes
4 you mentioned earlier?

5 A. Yes, sir.

6 Q. And my specific question is: Does
7 it provide specifically for any capital gains
8 liability that might incur based on the
9 transfers of the licenses?

10 Has the debtor contemplated that
11 possibility and provided for it in the plan?

12 A. Well, I think that -- certainly the
13 possibility of taxes related to the sale of
14 licenses is, you know, contemplated. I'm
15 trying to remember -- I think Choctaw and
16 Council Tree both talk about a payment of taxes
17 going forward, and the definition on Page 11 of
18 tax claims means any and all claims in any
19 entity for the payment of any taxes accorded a
20 priority by bankruptcy code.

21 Q. Where are you at?

22 A. I'm sorry. Page 11 of the third
23 amended disclosure statement. Just looking at
24 the definition of taxes.

25 The definition of taxes on Page 12

1 includes all federal, state, county and local
2 income, ad valorem, excise stamp and other
3 taxes of any type or nature whatsoever.

4 I assume that, you know, to the
5 extent that taxes are going to be included
6 here, that that would be included.

7 Q. Has there been any discussion
8 between the debtor and Choctaw or the debtor
9 and Council Tree or the debtor and anyone else
10 about the potential for capital gains taxes
11 being imposed by the IRS as a result of the
12 transfer of the licenses from the debtor to
13 Choctaw or CTI on the plan?

14 A. You know, not that I am aware of. I
15 mean, I got this 63-page, you know, document
16 yesterday.

17 Q. I appreciate that. I wrote that.

18 MR. LEECH: Very well written.

19 THE WITNESS: I went through it and
20 I saw in there that there is some claim about
21 200 million or something like that, but I guess
22 that was kind of the first time I had -- that
23 had been brought to my attention.

24 BY MR. RUHL:

25 Q. So the answer is no, as far as you

1 know?

2 A. As far as I know. Not before maybe
3 this arrived.

4 MR. GENO: You want to exclude from
5 that any discussions that are privileged
6 between debtor and his counsel, debtor and any
7 of its attorneys.

8 BY MR. RUHL:

9 Q. If I recall correctly, you told me
10 earlier that you were not involved with any
11 negotiations leading up to R. Hane Hollis, III
12 or Watson & Downs, LLC, or Chris Dupree loaning
13 money to the debtor but that you found out
14 about it from NRTC when they uncovered some
15 UCCs that were filed; is that right?

16 A. Yeah, that's right.

17 Q. Do you know what now -- I know you
18 didn't know about them before, but now, do you
19 know what led to those loans?

20 A. You know, I don't. That would be
21 something that Don and Sandra DePriest could
22 answer. They have known these folks.

23 I believe that at the time that NRTC
24 discovered the existence of security interests,
25 you know, the UCC, I believe that it was

1 Pinnacle Bank -- that was the one that they
2 first brought to my attention. I'm not sure if
3 Hollis, you know, Watson and Dupree were
4 secured lenders at that point or not, but the
5 one that I recall that they, you know,
6 presented to me would be Pinnacle Bank,
7 Collateral Plus debt.

8 Q. Okay. What relationship -- let me
9 ask this: Hollis -- R. Hane Hollis, III is
10 somehow involved in loans and ownership
11 interests in the DIP lender, Southeastern
12 Commercial Finance, right?

13 A. I saw that from the disclosure
14 statements.

15 Q. Yeah, that's in there. That's
16 right.

17 Isn't it correct that the -- that
18 neither the disclosure statement or a plan
19 contain a liquidation analysis? Do you know
20 what I mean by that?

21 A. I'm not sure.

22 Q. I don't think I needed to ask you
23 that anyway.

24 The CTI proposal, the way I read it
25 and I want you to tell me if you read it the

1 same way, is that CTI, under their proposal,
2 they capped the total amount that can be
3 distributed to unsecured creditors at
4 \$8.89 million; is that accurate?

5 A. That is my understanding, yes.

6 Q. Do you know why that is or what led
7 to that provision in the negotiation between
8 them and the debtor?

9 A. I don't know why that is, and, in
10 fact, you know, from what I read -- their plan,
11 it seems to indicate that the FCC would not get
12 any claim or any claim that the FCC would get,
13 you know, it has got a \$6 million claim.

14 As I read it, any amount that the
15 FCC would get would come directly out of the
16 unsecured claims, so in other words, they
17 capped the unsecured at 8-point-whatever
18 million.

19 Q. And they'd all share pro rata in
20 that 8.89 million, right?

21 A. Correct. So if the FCC and Council
22 Tree right now claimed, you know, in their
23 plan, allocates no money to the FCC, but the
24 FCC has a \$6 million claim, so if the FCC were
25 to insist on some or all of that money, let's

1 just say it's \$5 million, then that 5 million,
2 as I understand it would -- you know, it's the
3 FCC, right, so they are pretty important, so
4 that \$5 million would come out of the other
5 unsecured claims, I believe, on a pro rata
6 basis. That's my understanding of the Council
7 Tree plan.

8 Q. Without agreeing with that
9 understanding, I'll say thank you.

10 A. You're welcome.

11 Q. Because I think the FCC would share
12 with everybody -- all the other unsecured
13 creditors, if they're unsecured creditors, but
14 that's -- for what that's worth.

15 Under the Council Tree proposal, who
16 would retain any excess -- any proceeds in
17 excess of -- after the 8.89 million is paid to
18 unsecureds, would Council Tree get to keep
19 everything else?

20 A. So my understanding is that Council
21 Tree has a total cap, if you will, of around
22 \$30 million. That includes the secured, the
23 administrative, the taxes, the unsecured,
24 right, FCC, so after that cap, it's 30 or
25 32 million, after that cap is achieved,

1 anything over and above that, as I understand
2 the Council Tree plan, would belong to Council
3 Tree.

4 Q. You cast a ballot -- I also noticed
5 your deposition individually today, so I will
6 ask you this one individual question.

7 You cast a ballot on the plan, and I
8 believe you voted to reject the Council Tree
9 proposal. Am I remembering correctly?

10 A. I'll put on my unsecured creditor
11 hat. I voted, it's a matter of public record,
12 I voted to accept the Choctaw plan and to
13 reject the Council Tree plan.

14 Q. What was your reasoning?

15 A. As I indicated earlier, I'm an
16 unsecured creditor and I believe that the FCC
17 is going to insist upon being paid something,
18 and I believe that the way the Council Tree
19 plan is set up, whatever the FCC receives will
20 come out of the unsecured creditors -- in other
21 words, would come out of my portion of
22 recovery, and I have a problem with that
23 because I think that the FCC is in a position
24 where they could insist on getting paid
25 everything as part of any approval of any

1 sales.

2 So they are very uniquely situated,
3 I believe, so I didn't want to cut in half or
4 more my recovery. I also view the six month
5 limit on their funding, you know, proposed
6 confirmation, is probably not enough time to
7 get through any appeals, any Second Thursday
8 and the like, and so I thought that that also
9 could be trouble because, you know, it might
10 run to a point in time where all of a sudden
11 there is no money to fund the company, et
12 cetera, going forward, and then, you know,
13 selfishly, because it's in my own interest, I
14 also, you know, have an employment agreement
15 with Choctaw.

16 I don't have a similar kind of
17 written agreement with Council Tree and, you
18 know, so from that perspective also, it seems
19 to be of more personal interest for me. Again,
20 this is me as an unsecured creditor, me
21 personally, in my own -- looking after my own
22 personal interest to vote that way.

23 Q. I'm glad you said that there at the
24 end.

25 I will let the record reflect -- and

1 you tell me if you disagree with me, that last
2 answer was John Reardon, individual, not John
3 Reardon, the corporate representative of the
4 debtor, correct?

5 A. Yes. Thank you.

6 Q. Everything else has been John
7 Reardon as the corporate representative of the
8 debtor.

9 A. Yes. Correct. Thank you.

10 Q. Let me ask you -- I'm not going to
11 ask any more individual questions, so this is
12 you as the corporate rep.

13 Is that six month time limit which
14 frankly, I missed when I went through this
15 stuff, that six month time limit imposed by the
16 Council Tree plan, does that -- am I
17 understanding that you think that that renders
18 the Council Tree proposal not reasonably
19 assured of success?

20 A. Oh, again, with my -- as a
21 representative of the debtor, you know --
22 Council Tree, as you had indicated earlier, you
23 could get to the end of the six months and you
24 may not need additional time. They seem to
25 think in their filings clearly that they are in

1 a better position to get FCC approval than
2 Choctaw, so they probably have done some due
3 diligence in that regard, so maybe they don't
4 need six months.

5 Also, if they are that into it and
6 they have the approval for the licenses and six
7 months comes along, maybe they decide to pursue
8 that further. Also, maybe they don't hire me
9 and Tim and others and maybe they have a much
10 cheaper way to run the company, so maybe their
11 burn rate is not the same.

12 So anyways, you know, the end of the
13 six-month period doesn't mean necessarily that
14 their plan is a bad plan. It just means that
15 they have not committed beyond that.

16 Q. It makes their plan a little more
17 hypothetical, does it not?

18 A. It does. Perhaps I have misread
19 their plan, but I remember seeing -- I think
20 that six-month limit in there
21 post-confirmation. What they committed to for
22 the burn.

23 Q. You said -- I think -- well, never
24 mind.

25 You said that Council Tree appears

1 to think that they're going to have an easier
2 time getting Second Thursday approval. Does
3 the debtor agree with that?

4 A. Well, I don't know if the debtor has
5 an opinion one way or the other on that. I
6 don't know whether Council Tree would be
7 easier. I know their unsecured creditors
8 committee agrees with that, their -- has filed
9 that. I don't think the debtor really has
10 expressed an opinion one way or the other.

11 Q. I don't think they have either, but
12 does the debtor have an opinion that it hasn't
13 expressed before today on whether the Council
14 Tree plan -- Council Tree could have an easier
15 time getting Second Thursday approval?

16 A. No. That is really -- as I
17 understand it in my role as the debtor, both
18 parties have gone and investigated this and
19 have hired some pretty good FCC counsel, Mary
20 O'Connor at Wilkins & Barker and Michele
21 Farquhar over at Hogan Lovells, both excellent
22 attorneys, so as I understand it, both of them
23 seem, you know, seem pretty positive about the
24 potential for Second Thursday as much as
25 anybody can be, because you know how the FCC

1 and the government, they would not be in a
2 position where they could commit one way or the
3 other to some, you know, future speculative
4 filing unless and until it has been filed, so
5 there is no way anybody can tell, I don't
6 think, with any real certainty how the FCC
7 would decide. You know what I mean? I just
8 think it is --

9 Q. I do. You don't have a crystal
10 ball. I got it.

11 A. Correct.

12 Q. On Page 56 of our objection, we
13 discussed something, and I want to ask you:
14 Isn't it correct that the debtor voluntarily
15 turned back to the FCC some of its site-based
16 licenses including component station
17 authorizations for permanent cancellation in a
18 limited joint stipulation that was entered into
19 with the enforcement bureau?

20 A. I'm sorry. I'm on Page 56 of your
21 objection?

22 Q. Yes.

23 A. Do you talk about it in there?

24 Q. It's in the last paragraph on that
25 page.

1 You do remember the limited joint
2 stipulation I'm talking about, correct?

3 A. This talks about trouble damages?
4 Did I get the wrong -- I'm sorry. I'm just
5 trying to catch up with you.

6 Q. I got you. I'm working off a prior
7 version.

8 A. Do you want my copy?

9 Q. It's going to be under Subheading 8.
10 It's probably going to be -- it is
11 going to be Page 59.

12 A. Page 59, okay.

13 Q. Isn't it correct the debtor
14 voluntarily turned back in some of its
15 site-based licenses in connection with a
16 limited joint stipulation entered into with the
17 enforcement bureau? I just want to ask you if
18 you recall that.

19 A. Yes.

20 Q. Tell me about why that was done.

21 A. Well, you have got the real expert
22 right here, Bob Keller, but essentially, those
23 were site-based licenses which were covered by
24 geographic licenses, so it's like the hole of a
25 donut, you know, and if you cancel the hole,

1 you already own the donut, so all of a sudden,
2 you own the hole and the donut, and it's one
3 big pastry. How's that for a bad analogy?

4 Q. If the donut is eaten because the
5 geographical license gets revoked, you still
6 have the donut hole if you have got the
7 site-based license, wouldn't you agree with
8 that?

9 If the geographic license gets
10 revoked and you hadn't turned back in the
11 site-based license, you would still have the
12 site-based license?

13 A. If the geographic license is revoked
14 and you still have the site-based license, then
15 in that hypothetical, you would still own the
16 site-based license, right.

17 Q. So to that extent, didn't the
18 site-based license have some value to the
19 debtor?

20 A. I guess hypothetically, it might
21 have, but in this situation where you cancel
22 the site-based license, you still own all of
23 that area and you have in a -- a construction
24 deadline of that entire area, which is December
25 of 2016, and so from the standpoint of just

1 streamlining the proceeding and reducing the
2 issues in the proceeding, this probably took
3 away, you know, half of the number of call
4 signs that needed to be examined and
5 streamlined the case, so there was efficiencies
6 that were gained.

7 Q. We discussed earlier some
8 pre-petition executory contracts and unexpired
9 leases that have not been approved by the
10 bankruptcy court yet, and the plan says those
11 will be -- the debtor's intent if the plan's
12 confirmed, they will be assumed. The Evergreen
13 School District, those are the ones we talked
14 about before. You remember those?

15 A. Yes.

16 Q. Is it the debtor's intent -- does
17 the debtor think under its plan that those will
18 be assumed without having to have a hearing on
19 whether the prices in those asset purchase
20 agreements are fair and reasonable and other
21 things we got to discuss in the prior hearings?

22 MR. GENO: Object to the form of the
23 question.

24 THE WITNESS: Well, there aren't
25 purchase agreements that relate to those

1 leases. Those are leases --

2 BY MR. RUHL:

3 Q. None of those involve purchase
4 agreements. Those are all just pure leases; is
5 that right?

6 A. Yes, sir.

7 Q. I understand. Thank you.

8 All the pre-petition deals that
9 involve purchase agreements have now come
10 before the court and gotten approved by the
11 bankruptcy court; is that correct?

12 A. I'm sorry. All of the pre-petition
13 deals?

14 Q. Yeah, just the pre-petition deals.
15 I'm not talking about Rappahannock.

16 A. Okay.

17 Q. Let me say this: Other than the
18 Rappahannock deal that involved the sublease
19 and the direct lease that are now potentially
20 going to be subsumed in the post-petition sale
21 agreement that is going to come before the
22 court, excluding that, all pre-petition
23 agreements for the sale of licenses have
24 already come before the bankruptcy court and
25 been approved; is that correct?

1 A. They have come before the bankruptcy
2 court or they have been cancelled, like, for
3 example, in the case of DCP Midstream, DCP
4 Midstream had a purchase agreement in place.
5 The hearing designation order was released in
6 April of 2011. It required anybody that wanted
7 to pursue their purchase to go ahead and become
8 a party to the show cause hearing and DCP
9 Midstream said, thanks but no thanks, and so
10 they backed out, so that is a pre-petition
11 purchase agreement which was I guess cancelled
12 by them or terminated by them sometime around
13 -- it might have been just after the Chapter 11
14 or just before, I don't know. So that is one
15 that would not, you know, come before the
16 court.

17 Then you have got some other ones,
18 like the Alliant Energy which is Interstate
19 Power and Wisconsin Power and Light, where they
20 also have terminated.

21 Q. Right. I got that.

22 A. Okay.

23 Q. So there is no pre-petition asset
24 purchase agreement that the debtor is seeking
25 to assume in this plan other than the

1 Rappahannock deal which is now also subject to
2 the Rappahannock motion to sell.

3 A. I believe that is correct.

4 Q. On Page 61 of the objection, in the
5 second full paragraph under heading Roman
6 Numeral 11, it starts with: "If the court
7 chooses to confirm the plan."

8 Are you with me?

9 A. Yes.

10 Q. "SkyTel requests the confirmation
11 order include expressed language which
12 clarifies," and then we set out A, B, C, D.

13 Then in the next paragraph, we also
14 request a confirmation order include the
15 following language set forth in that paragraph
16 consistent -- we think with the agreed order
17 that was entered into, temporary allowing
18 SkyTel's claims for limited purposes of voting
19 and confirmation.

20 I'm asking you if you can tell me
21 today: Does the debtor object to the
22 confirmation order to the extent its entered
23 including that language?

24 MR. GENO: Object to the form of the
25 question.

1 THE WITNESS: You know, I just -- as
2 I mentioned, I had a chance to read through
3 this last night and I haven't had a chance to
4 talk with either the debtor's bankruptcy
5 counsel or the debtor's FCC counsel, Curt Brown
6 or Bob Keller, so I just don't have an opinion
7 on that one way or the other.

8 BY MR. RUHL:

9 Q. Is there an agreement between MCLM
10 and Motorola that is currently in existence?

11 A. No.

12 MR. GENO: Object to the form of the
13 question.

14 THE WITNESS: Sorry. I went too
15 fast. No.

16 BY MR. RUHL:

17 Q. Was there one -- was there an
18 agreement between the debtor and Motorola at
19 any time after the bankruptcy was filed?

20 MR. GENO: Same objection.

21 THE WITNESS: No.

22 BY MR. RUHL:

23 Q. Was there an agreement between the
24 debtor and Motorola at any time before the
25 bankruptcy case was filed?

1 MR. GENO: Same objection.

2 THE WITNESS: Let's see. At some
3 point in time, I believe that Maritime agreed
4 to pay Motorola for some equipment which was at
5 a site. There is some -- something or other,
6 but it has been years since that. I don't know
7 if that was ever reduced into an agreement or
8 not.

9 BY MR. RUHL:

10 Q. I am going to hand you a document to
11 take a look at. My understanding is this was
12 printed off of Maritime's website at one point
13 or the another.

14 Regardless, I'm just going to ask
15 you about a statement that's in here. It says,
16 under No. 4: "MCLM entered in a long-term
17 agreement with Motorola to build, operate and
18 maintain two-way voice systems throughout the
19 country."

20 Is that an accurate statement?

21 MR. GENO: Object to the form of the
22 question.

23 THE WITNESS: It is not an accurate
24 statement. It was Mobex that entered into the
25 long-term agreement with Motorola.

1 This looks like it was a Mobex
2 website and somebody just put MCLM on there
3 instead of Mobex, because for example, this
4 phone number is -- see, under No. 3 or 2? That
5 looks like an old Mobex phone number. And as
6 you'll see on the next page, it says -- on
7 No. 11, at the very bottom, it says: "Please
8 call Dave Predmore, associate counsel."

9 He never worked for Maritime. He
10 was Mobex.

11 BY MR. RUHL:

12 Q. Regardless of -- I can tell you that
13 I didn't change the document from Mobex to
14 MCLM. Let's put it that way.

15 A. I didn't mean that you did. I just
16 meant somebody, you know.

17 Q. Could have done that?

18 Well, regardless of that, I am
19 really just wanting to know if it's true that
20 -- well, I think you said that MCLM never had
21 that kind of an agreement, right?

22 A. That's correct. That was with
23 Mobex.

24 Q. Did that agreement come over in the
25 asset sell from Mobex to MCLM?

1 A. No, it did not. Motorola wanted
2 that agreement to convey, but Maritime
3 Communications, as I testified with Pam Kane
4 about a month ago, Maritime Communications
5 didn't necessarily want to be in the passport
6 business because customer loading was not
7 great, and it was pretty clear that the world
8 was going in the direction of cellular
9 technology, where people didn't wanted a big
10 old two-way radio in their hand. They wanted a
11 smartphone or RAZR at that time.

12 Q. Would you agree that in general, the
13 value of -- well, let me you this: 220
14 megahertz, is that the frequency of Maritime's
15 licenses?

16 A. The exact frequencies are between
17 217 megahertz and 218 megahertz, and then 219
18 megahertz and 220 megahertz, so it is --

19 Q. The NRTC stuff is 222; is that
20 right?

21 A. Yes. So that is 220 to 222. It's
22 just above.

23 Q. Has the value of 226 -- or 220
24 megahertz frequency gone up significantly
25 since, say, January 1st, 2010?

1 A. Since when?

2 Q. January 1st, 2010?

3 A. 2010? I don't think that it has. I
4 mean, the transactions that we've entered into,
5 for example, with Rappahannock and Shenandoah
6 are similar to the value of the transaction
7 that we entered into Rappahannock and others in
8 the electric utility world before then, so it's
9 not the same.

10 Q. I'm going to hand you two pages.
11 They are Bates-stamped CoServ 8 and CoServ 9.
12 This is part of the production that CoServ did
13 in the -- I guess the dispute between the
14 debtor and CoServ about them trying to
15 terminate their deal.

16 I understand it has been a while
17 since you have seen those. That is my
18 handwriting on the top where I say JR regarding
19 value, but can you look that over and tell me
20 -- I think the first page is an e-mail from
21 Charles Plumber to Chris Anderson, and the
22 second page appears to be an e-mail from you to
23 Charles Plumber, but look that over and confirm
24 if that's correct.

25 A. Okay.

1 Q. Do you -- is it true that the second
2 page is an e-mail from yourself to a gentleman
3 named Charles Plumber and the first page is an
4 e-mail from Charles Plumber to a gentleman
5 named Chris Anderson?

6 A. That's right.

7 Q. Chris Anderson was with CoServ; is
8 that right?

9 A. Yes.

10 Q. Chris -- was that the same guy you
11 left the voice mail for that we listened to
12 earlier?

13 A. Probably, yeah.

14 Q. I think in your e-mail, you
15 reference that "our prices," which I assume
16 means the debtor's prices, "have increased
17 around the nation and in Texas especially over
18 the past year due to high level of demand for
19 our spectrum," meaning the debtor's spectrum,
20 "among the transportation, oil and gas and
21 utility industries."

22 Do you still agree with that
23 statement?

24 A. Let's see.

25 "In general, as you know, our prices

1 have increased around the nation and in Texas
2 especially over the past year due to the high
3 level of demand for our spectrum among the
4 transportation, oil and gas and utility
5 industries."

6 Yeah, this was in January 2011, so
7 before the hearing designation order and before
8 the bankruptcy. Yep. So at that time, that
9 would have been accurate.

10 Q. Okay.

11 MR. RUHL: Let me mark this as the
12 next exhibit.

13 MR. GENO: Object to the form of the
14 question.

15 MR. RUHL: Asking the court reporter
16 to mark it as an exhibit?

17 MR. GENO: Yes. Object to the
18 introduction of the document.

19 (Deposition Exhibit No. 4 was marked
20 for identification.)

21 BY MR. RUHL:

22 Q. Mr. Reardon, this CoServ 8 and
23 CoServ 9 -- did I mishear you? I think you
24 said you recall these communications. This one
25 on CoServ 9 was from yourself to Charles

1 Plumber and this was on CoServ 8 was from
2 Charles Plumber to Chris Anderson. Didn't you
3 say that?

4 A. I believe that the one that you have
5 there from Charles to Chris or whatever, I
6 don't think I was copied on that one.

7 Q. You are right. I apologize.

8 A. But see the one down below there
9 from me to Charles? That looks like my e-mail
10 to Charles.

11 Q. That's the one you recognized.

12 A. Sure. I haven't seen that other
13 one, from Charles to whoever, Chris or whoever.

14 Q. Fair enough.

15 Moving on, at least for the moment,
16 to the Rappahannock sale motion, I have a copy
17 of it here. It's Docket 747 in the bankruptcy
18 case. I'll give it to you so you can refer to
19 it.

20 You've already told me a little bit
21 about what led up to this deal and a little bit
22 about the leases that are referred to in there.
23 But what I want to ask you more specifically is
24 -- well, let me back up.

25 Your counsel said earlier that the

1 debtor intends to designate you as an expert
2 witness in the areas of FCC spectrum license
3 valuation and marketing of FCC spectrum
4 licenses.

5 Is that consistent with your
6 understanding?

7 A. Yes.

8 Q. Is that for the planned confirmation
9 hearing and the motion to sell hearing?

10 A. I believe so, yes.

11 Q. Can you tell me what the -- tell me
12 your -- give me your expert opinions that you
13 intend to offer in connection with the motion
14 to sell.

15 To shortcut the process, John, I am
16 asking your opinions and the basis for them,
17 and I imagine they relate to the price and the
18 deal, debtor business judgment, all the things
19 we talked about at prior hearings, so I to know
20 what your opinions are as the debtor's intended
21 expert on value and marketing and what the
22 grounds for them are in connection with this
23 motion to sell.

24 A. Oh, sure. As I mentioned earlier,
25 Shenandoah Valley had done a similar

1 transaction at a similar price, where
2 essentially they took their licenses -- I'm
3 sorry, the channels that they were releasing,
4 our licenses, and we assigned a value to each
5 channel and then we deducted from that value
6 the amount that had already been paid under a
7 lease, and we did a similar formula here with
8 Rappahannock, where we took the -- I believe
9 it's 31 channels and we assigned a value per
10 channel.

11 We came up with somewhere around
12 \$450,000 roughly and then we subtracted the
13 amount that had been paid over the years by
14 Rappahannock to MCLM or NRTC for the lease or
15 sublease of those channels, and came up with
16 the purchase price of \$384,000. That's how we
17 came up with the valuation.

18 It is very consistent with the
19 Shenandoah Valley deal which is a matter of
20 public record and which Rappahannock looked at
21 as a benchmark because it is a similar part of,
22 you know, geographic area of Virginia.

23 So like most negotiations, we
24 started a little higher, they started a little
25 lower. Unlike most negotiations, they had a

1 very public and very contemporaneous example of
2 a similar deal which was Shenandoah, and so
3 there is only so much more we could negotiate
4 price-wise than what had been done there.

5 We got a slightly better price per
6 channel but nothing outrageous and different.

7 Q. So what is your first expert opinion
8 in connection with this motion?

9 A. Yeah, one opinion that I have on
10 this motion is that because the channels are
11 under a long-term lease already, a ten-year
12 lease essentially already, the sale of the
13 channels brings cash into the debtor and
14 extracts more value from the licenses, so
15 again, this is an asset which is already under
16 lease similar to the Shenandoah Valley deal. I
17 believe it makes sense for the debtor to
18 convert that to purchase agreement and get
19 cash, you know, from the buyer.

20 The alternative to this would be to
21 wait, you know, maybe another seven or eight
22 years until the lease would expire and then try
23 to remarket the spectrum at that point.

24 In addition, because this involved
25 31 channels, the buyer has extra spectrum.

1 It's not all of the spectrum. We have 40
2 channels in this largely rural area, so we do
3 have additional spectrum with which we could
4 provide services to others, you know, if there
5 was a demand for that.

6 Q. The leases that involved these
7 channels payers or the spectrum involved in
8 this asset purchase agreement, when did you say
9 they were set to expire?

10 A. You know, I think that it's a
11 ten-year lease and I believe that it begins
12 around 2009, so, you know, of course, it is
13 subject to renewal of the auction license which
14 would occur in early 2017 because any lease can
15 only go up to the end period of the license and
16 then it would renew when the license renews,
17 but the lease term is up to ten years, so it
18 would be, what, 2019?

19 Q. Now, the debtor can enter into
20 leases despite the hearing designation order,
21 right? It can't sell spectrum without getting
22 FCC approval to close the APAs, but it can
23 lease spectrum, correct?

24 A. It can lease spectrum. As I
25 testified earlier, the problem with leasing

1 spectrum brand new -- on a brand new basis, is
2 that anybody like -- any new customer that
3 would come in, like Rappahannock, would need to
4 spend a lot of money to deploy a new
5 communication system.

6 In this case, Rappahannock's already
7 built out these frequencies, these 31
8 frequencies in these locations which are
9 indicated on Exhibit B, so if we were to not go
10 forward and instead, if we were to try to pull
11 the plug on Rappahannock, we could open
12 ourselves up to some pretty significant damages
13 claims, I believe, against us, and also it
14 would really hurt our reputation out there in
15 the utility industry in particular.

16 Q. You mean, if you rejected it instead
17 of assuming it?

18 A. That's right, because they built all
19 these different sites, there's Fredericksburg,
20 Bowling Green, you can see Exhibit B. All
21 these different areas that they've actually
22 built out and they're operating.

23 So we just had a bad storm come
24 through here, you know, last week, and, you
25 know, they respond to emergencies, people out

1 of power, that sort of thing, using this
2 two-way radio system and the guys in the bucket
3 trucks working on the lines and it's pretty
4 important.

5 Q. If you agreed with Mr. Keller that
6 the value of the spectrum that is being leased
7 by the debtor to Rappahannock is going to be
8 worth a heck of a lot more if Second Thursday
9 relief is granted, then wouldn't you want to go
10 ahead and ride this lease out instead of
11 turning it into a sale agreement?

12 A. Well, I mean, 2019 is an awful long
13 time to wait, you know, so it is kind of like a
14 bird in the hand is worth two in the bush. And
15 also because as I testified earlier, we have
16 another nine channels out of 40 channels
17 available. This does not preclude us from
18 either selling those additional channels down
19 the road maybe for more money. Who knows?
20 Maybe the same customer comes back and at that
21 point, we can charge more.

22 Q. Let me make sure I'm understanding
23 you.

24 There are some channels or some
25 spectrum that's included in the current lease

1 between the debtor and Rappahannock and/or the
2 sublease between NRTC and Rappahannock that is
3 not being sold under this asset purchase
4 agreement?

5 A. I must have given the wrong
6 impression. What I mean is the current leases
7 and this agreement call for the lease or
8 purchase of 31 channels. The debtor owns 40
9 channels, so there are still nine channels
10 which are available for the debtor to do
11 something else with in this area.

12 Q. I got it.

13 So let me drill down on your
14 opinions, because I'm not sure I'm hearing
15 them.

16 Is one of your expert opinions you
17 intend to offer in connection with this sale
18 motion that the price is fair and reasonable?

19 A. I believe it is fair and reasonable.

20 Q. Tell me all the bases for you
21 believing it's fair and reasonable, other than
22 what you've already said.

23 A. Okay, yeah, because I mentioned that
24 -- the Shenandoah Valley one. We have done a
25 number of transactions over the years for sales

1 to utilities, like Jackson County Electric, to
2 oil and gas companies like Encana, and these
3 are largely based on per-channel per-site
4 usage, like is explained here in Exhibit B,
5 where they have got specific channels and
6 specific sites in a very well-defined contour,
7 so it's a narrow geographic area, and over the
8 years traditionally the prices that we have
9 been able to obtain have been somewhere
10 between, you know, 13,000 and \$15,000 per
11 channel.

12 If you take the value of this
13 transaction, which is 384,000 and then you
14 include the value you've already received of
15 roughly 70,000, you get up to about \$15,000 per
16 channel of value received for the licenses
17 which is at the higher end of what we have been
18 able to sell the spectrum for, like in the
19 Encana deal, Duquesne Light, any other similar
20 transactions.

21 This is also a rural area by and
22 large. It is not a very highly populated area,
23 and this is also a customer that as I mentioned
24 earlier already has the beneficial use of the
25 spectrum under a lease for a long time, and so

1 we would not be able to redeploy these 31
2 channels at least until the year 2019.

3 So it is my opinion that it would be
4 -- it is a good price, that it is money, you
5 know, money in the bank now and the value of
6 \$384,000 now in present terms, you know, and
7 then you apply an interest rate or whatever to
8 it, in 2019, that might be worth twice as much
9 just in terms of, you know, time, value and
10 money.

11 Q. Any other reasons or bases for your
12 opinion that the price in that asset purchase
13 agreement is fair and reasonable?

14 A. I think I testified earlier, too,
15 about the damages, you know, if we were to walk
16 away from this deal, there would be some
17 significant damages because there is one, two,
18 three, four, five, six, seven sites have been
19 deployed of equipment.

20 You probably are looking at a
21 minimum of 20 or \$30,000 of equipment per site,
22 and then you have got installation and they
23 would have to go and find some other spectrum
24 and buy new equipment.

25 Q. That is only if the debtor

1 rejects to it?

2 A. Right. So that would also be a bad
3 outcome.

4 Q. Any other reasons for your opinion
5 that it's fair and reasonable?

6 A. Not that I can think of offhand, no.

7 Q. What other opinions do you intend to
8 offer in connection with that sale motion?

9 A. This particular sale motion?

10 Q. Uh-huh.

11 A. We will probably go through what we
12 have in the past. I mean, you know, is it
13 marketed? Was it fair and reasonable? I can't
14 remember all the different criteria that are
15 gone through.

16 Q. So one of your opinions is going to
17 be that -- you are the expert, so I'm trying to
18 get you to tell me what you expect your
19 opinions to be. One is fair and reasonable
20 price. What are the other ones?

21 A. It's an arm's length transaction.
22 We marketed this spectrum. You know, using
23 good faith efforts, actively marketed this
24 spectrum.

25 We do have NRTC as I mentioned

1 earlier as a broker in this marketplace. They
2 have a pretty broad net of contacts within that
3 industry, but also Spectrum Bridge has had
4 access to the channels or the channels around
5 this area to market, and in addition to that,
6 you know, as I mentioned, we had the other nine
7 channels and we don't have anybody interested
8 in buying that spectrum at this point despite
9 marketing that through Spectrum Bridge analysis
10 in 2008, so this has been pretty broadly
11 marketed. This area is a rural area.

12 I believe it is a fair and
13 reasonable price that they are paying. We know
14 that they pay because in the past, they have
15 paid. Utilities are pretty good clients to
16 have because they are generally pretty
17 creditworthy, so we feel pretty confident that
18 they are earnest. They intend to close the
19 transaction, you know, if given the
20 opportunity, and that they are very capable of
21 paying this purchase price because they are a
22 multi-million dollar utility in size.

23 Q. Was the transaction as negotiated in
24 your opinion, an arm's length transaction?

25 A. Yes, I believe that it was an arm's

1 length transaction.

2 Q. Tell me all the reasons you think it
3 was.

4 A. Well, you know, they are a legal
5 entity of course. They are -- they have
6 already contracted, I believe and have purchase
7 or leased spectrum from NRTC in the past, so
8 they know, you know, that they have other
9 sources of spectrum that they could go to if
10 they need it.

11 Certainly, they are aware of Mr.
12 Havens and licenses that he may own so they
13 have alternatives if need be to buying the
14 spectrum from Maritime. So from that
15 perspective, you know, it was definitely an
16 arm's length negotiation.

17 Q. Tell me all the reasons why -- I'm
18 assuming the debtor thinks that it's in its
19 business judgment to -- or it's in its -- it's
20 a proper exercise of its business judgment to
21 enter into this deal; is that right?

22 A. Yes.

23 Q. And tell me all the reasons why you
24 think that is.

25 A. Well, it would provide some good

1 consideration to the creditors or to the debtor
2 in this case, I guess, in terms of, you know,
3 it's real money, \$384,000. It would also allow
4 us to continue what I would say is a pretty
5 good relationship with the electric utility
6 industry and a lot of this is word-of-mouth
7 type sales, so the ability to close this and
8 other sales, I think would help us with future
9 efforts to sell spectrum particularly into the
10 electric utility marketplace.

11 So from that standpoint, I think it
12 would be good for the debtor to get the cash.
13 \$384,000 is pretty good money.

14 Q. You mentioned that you might be --
15 or that you intended to offer expert opinions
16 in connection with the planned confirmation
17 hearing; is that right?

18 MR. GENO: No.

19 MR. RUHL: That's not right?

20 MR. GENO: Only as to value of
21 spectrum and license and marketing to the
22 extent those are relevant for confirmation.

23 BY MR. RUHL:

24 Q. What opinions are you planning on
25 expressing at the confirmation hearing as an

1 expert witness for the debtor?

2 A. Well, I guess if at the confirmation
3 hearing, we go through the various purchase
4 agreements and leases that have been approved
5 or reviewed by the court, as the case may be, I
6 would imagine testifying to similar matters
7 that have been brought up, you know, during
8 those hearings in the past, like the one in
9 September in front of Judge Houston, so I would
10 anticipate saying really similar testimony as
11 to what has been given in the past.

12 Q. Are you going to offer any opinions
13 at the confirmation hearing that are related to
14 the overall valuation of all the debtor's
15 licenses?

16 A. Well, I guess if I am asked I could,
17 but, you know, my opinion -- as I mentioned
18 earlier, is that unless and until you can get
19 an approval from the FCC of a transaction, then
20 the value of the spectrum is little to nothing
21 at this point.

22 Q. Is that the only opinion as to value
23 of the debtor's licenses that you intend to
24 express at the confirmation hearing as an
25 expert witness for the debtor?

1 A. Well, I mean, if I'm asked a
2 different question, I guess I could, you know,
3 express -- I'm not sure I understand the
4 question.

5 Q. When -- if you are going to be
6 designated as an expert witness for the debtor,
7 I get to ask you what opinions you're going to
8 offer, and I'm trying to ask you what opinions
9 you plan to offer at the planned confirmation
10 hearing, and you have to tell me that. I can't
11 put it in your mouth.

12 A. It would be opinions very much like
13 what I have given in the past about the
14 existing contracts.

15 Q. The opinions in connection with the
16 asset purchase agreement that's being approved
17 by the court?

18 A. That's correct, and the opinions
19 that I have given in the past and again today
20 about the value of the licenses today, where I
21 have said that -- look, I really I think that
22 unless and until transactions can be closed,
23 the value of something that you can't sell is
24 effectively zero, and that remains my opinion,
25 and I think we've talked a lot today about

1 Second Thursday and all the other contingencies
2 that are out there, which, you know, final
3 orders, Second Thursday, Footnote 7, all those
4 appeals and all those other things which sort
5 of stand in the way of realizing any value
6 through sales of licenses.

7 Q. Do you intend to give any expert
8 opinions at the planned confirmation hearing
9 other than what we've already discussed or what
10 you have already testified to in either past
11 hearings or today?

12 A. No. I hope to really avoid engaging
13 in any hypothetical valuation discussions
14 because it's all sort of out there,
15 hypothetical.

16 Q. I'm hypothetically trying to make
17 sure I'm not surprised on the 14th.

18 MR. GENO: Let me say for the
19 record, you will be asked a hypothetical to
20 assume the Second Thursday is granted and the
21 sales close, what is your opinion of value at
22 that point? So that hypothetical will
23 absolutely be asked of you.

24 BY MR. RUHL:

25 Q. Well, let me ask you now, and I'll

1 turn that question into my question to you
2 today: What is your opinion of the value of
3 the licenses, assuming that Second Thursday
4 relief is granted and any other FCC approval is
5 required or obtained?

6 A. Well, let me answer that this way.
7 Second Thursday approval is obtained. Mr.
8 Havens appealed that decision. Several years
9 go by before any decision is rendered and then
10 at that point in time, if there is -- once and
11 for all, some type of finality or some type of
12 removal of clouds, as you put it in your plan,
13 or, you know, delivery of quiet title, as you
14 might say in a real estate situation, if all of
15 those hypotheticals come to pass, then the
16 licenses could be worth maybe a little bit more
17 than the \$30 million of debt. You know, maybe
18 they are worth 40 million. Maybe they are
19 worth more than that, but it seems to me that
20 that is not just one hypothetical but that's
21 kind of a series of hypotheticals because Mr.
22 Havens isn't going away anytime soon. Receipt
23 of Second Thursday is just one stop along that
24 road.

25 There's going to be court challenges

1 at the FCC and the bankruptcy court, you know,
2 whatever decisions are made, so I believe at
3 some point down the road, if things were all
4 clear of Mr. Havens' challenges, there would be
5 enough value to pay off the debts.

6 I certainly hope so. I'm an
7 unsecured creditor, but getting from here to
8 there is more than just receiving Second
9 Thursday in my opinion.

10 Q. I understand. I tried to ask you
11 this at hearings before and I am glad we've
12 gotten down to it.

13 If we assume that some finality is
14 obtained, what is your opinion of the value of
15 all those licenses?

16 A. You know, it might be worth maybe
17 \$40 million. Somewhere in that ballpark.

18 Q. What are each and every grounds for
19 that opinion?

20 A. Well, I don't have many grounds for
21 that opinion other than to look at -- if there
22 is about 200 million people covered with the
23 spectrum and you have got about one megahertz
24 of pop for that, you know, you're not going to
25 be able to sell probably all of the areas that

1 are covered because it's just -- it doesn't
2 work that way when you sell on a regional
3 basis, but let's say that you are able to sell
4 maybe 150 million worth of the 200 million
5 population because you are going to have some
6 overlap in some areas.

7 In other words, you can't sell one
8 area and just sell what is right next to it.
9 You have to give some buffer for interference
10 and the like. So let's say that you are able
11 to sell about 150 million pops.

12 Let's say that you are able to sell
13 somewhere around what you got for Metrolink,
14 which is around 30 or 35 cents per megahertz
15 pop, so you might be able to get somewhere
16 around 40 or \$45 million total over time if
17 there are no clouds, all these other
18 contingencies and hypotheticals, so, you know,
19 you might get there.

20 That would be the basis for my
21 hypothetical opinion of the potential value of
22 the spectrum.

23 Q. That is based on assuming 30 to 35
24 cents per megahertz pops which I think you said
25 was about what is in the SCC RA deal?

1 A. Right. And then assuming that you
2 get somewhere around maybe 150 million pops
3 sold of the 200 that you own, because not
4 everywhere is going to be sold, you can't, you
5 know, sell everywhere right next to each other.
6 You are going to have to give some buffer.

7 Q. Okay. Now why do you think that 30
8 to 35 cents per megahertz pop is the number to
9 use in your hypothetical opinion?

10 A. Well, it's a large market, you know,
11 Southern California. You are selling a whole
12 megahertz in that area. It's a pretty
13 sophisticated buyer. As I testified earlier,
14 we had sort of an auction, if you will, between
15 utility company and the train company. You
16 know, the rail. Semptra Energy was the utility,
17 so we have a competitive sort of process, so I
18 think it's the best benchmark when you are
19 looking at selling large areas of spectrum to
20 utilities or railroads, that's probably the
21 best benchmark to use.

22 Q. Is it not correct that the megahertz
23 -- what do you call it, the 30 to 35 cents
24 megahertz pops?

25 A. Megahertz pops. It's just an

1 arbitrary --

2 Q. Megahertz pop, got you.

3 The megahertz pop in the debtor
4 asset purchase agreements that have been
5 approved by the court, isn't it correct that
6 the average is around 46 or 47 cents megahertz
7 pop, when you look at the debtor asset purchase
8 agreements that have been approved by the
9 bankruptcy court?

10 A. Whatever it is, it is. I don't know
11 if it's 46 or 40 or 35 or 50, you know,
12 whatever it is, it is. I think the average --
13 is it the Rappahannock or the -- you showed me
14 something earlier that talked about an e-mail
15 from Charles Plumber to CoServ, in which he
16 said it was somewhere around 40 cents a
17 megahertz pop or something like that, so, you
18 know, it fluctuates depending upon how much
19 spectrum you are buying. If you are buying a
20 little bit of spectrum, maybe the per-megahertz
21 pop amount is a little higher.

22 But you also might be buying
23 spectrum in an area that just doesn't have a
24 lot of people, so maybe it doesn't apply
25 directly, like in Rappahannock or Shenandoah.

1 We really don't even base it on megahertz pops.

2 Q. Would it surprise you to know that
3 the average megahertz pop in all the asset
4 purchase agreements that have been approved by
5 the court is around 47 cents?

6 A. Not necessarily. It wouldn't
7 surprise me necessarily.

8 MR. RUHL: I have to take a break.

9 (A short recess was taken.)

10 BY MR. RUHL:

11 Q. Mr. Reardon, are there any other
12 opinions you intend to give at the confirmation
13 hearing other than what we've discussed?

14 A. Yes. Related to the value of
15 spectrum, my chief concern in the valuation
16 going forward is that there is going to be
17 additional spectrum brought on the market which
18 will depress the prices going forward.

19 For example, Warren Havens recently
20 lost 360 licenses in the 220 to 222 megahertz
21 band. This is spectrum which is nationwide
22 that can be used by utilities --

23 Q. Hold on one second.

24 MR. RUHL: People on the phone, I'm
25 sorry, I forgot to un-mute it, but Mr. Reardon

1 is explaining one other opinion that he has and
2 intends to express at the confirmation hearing.

3 BY MR. RUHL:

4 Q. Do you mind backing up? I'm sorry.

5 A. Yes. I'm concerned about the
6 addition of spectrum to the marketplace,
7 depressing prices going forward. For example,
8 there is an auction of 218 to 219 megahertz
9 licenses which was postponed by the FCC a few
10 years ago. That spectrum is valuable for
11 utilities and railroads. The same people who
12 are interested in purchasing spectrum from AMTS
13 licensees, like Mr. Havens and Maritime.

14 In addition, Mr. Havens lost 360
15 licenses in the 220 to 222 bands. Those
16 licenses will eventually be re-auctioned by the
17 FCC. He has appealed that decision but he will
18 probably lose, and those will be auctioned off
19 by the FCC which will create additional
20 competition to the spectrum which is held by
21 AMTS licensees.

22 Furthermore, there is other spectrum
23 that is available. The railroads have asked
24 Congress to either delay the implementation of
25 positive train control to 2018 or simply limit

1 or cancel their requirement. There are a
2 number of satellite companies now that are
3 offering positive train control type services,
4 so in addition to competition in the 200
5 megahertz area, there is other spectrum, TV
6 white spaces, et cetera, which is coming
7 online, so my concern is that while right now,
8 there is not a lot of competition to the AMTS
9 bands for positive train control and smart grid
10 application, in the very near future, there's
11 going to be FCC auctions and additional
12 technical and regulatory and legislative
13 actions which will provide more spectrum into
14 the marketplace at the same time of allowing
15 people to avoid the requirements, for example,
16 with positive train control to buy the spectrum
17 in many cases.

18 So I think all that will contribute
19 to possible reduction in the value of spectrum
20 in the 200 megahertz bands over the longer
21 term.

22 Q. Any other opinions?

23 A. On?

24 Q. That you intend to offer at the
25 planned confirmation hearing other than what

1 we've already discussed?

2 A. You mean about value?

3 Q. About anything that you will be
4 designated as an expert witness for -- other
5 than what we've already discussed here today or
6 other than what you've already testified to at
7 prior hearings?

8 A. I don't believe so, no.

9 Q. Do you intend to develop any further
10 opinions between now and the planned
11 confirmation hearing?

12 Do you currently intend to work on
13 any other opinions between now and the
14 hearings?

15 A. It's not my intent to right now.

16 Q. Can you tell me as part of the
17 30(b)(6) notice today, the witnesses the debtor
18 plans to call at the confirmation hearing?

19 A. What witnesses do we plan to call at
20 the confirmation hearing?

21 Q. Yes.

22 A. Let's see. In addition to myself, I
23 believe Bob Keller will be there.

24 THE WITNESS: Do you know if we have
25 any other witnesses?

1 MR. GENO: I don't think so.

2 THE WITNESS: If people show up for
3 other purchasers, those would not be our
4 witnesses. What about -- would witnesses be
5 Council Tree or Choctaw? Would they be our
6 witnesses?

7 MR. GENO: No, they would be Council
8 Tree and Choctaw witnesses.

9 THE WITNESS: Okay. I'm trying to
10 think if there's anybody we're missing.

11 BY MR. RUHL:

12 Q. Do you all intend to call Sandra
13 DePriest?

14 THE WITNESS: Do we intend to call
15 Sandra DePriest?

16 MR. GENO: I don't know. I haven't
17 decided.

18 BY MR. RUHL:

19 Q. Do you know of any other witnesses
20 any other parties intend to call including
21 Council Tree, Choctaw or any of the other
22 buyers in the APAs?

23 A. No, I don't.

24 Q. Do you know if any of the other
25 parties have retained or sought to retain

1 expert witnesses for the hearings?

2 A. I believe that Choctaw and Council
3 Tree may be seeking to find experts, but I
4 don't know who they would be.

5 Q. Do you know what they are seeking to
6 find experts for? What subject areas?

7 A. I think FCC areas, you know, like
8 Second Thursday-type stuff.

9 Q. Okay.

10 MR. RUHL: That's all the questions
11 I have for you, Mr. Reardon.

12 I'm going to move on to Mr. Keller
13 when he gets back. He just went to feed the
14 meter so hopefully, he'll be back in a second.
15 Thanks for your time.

16 MR. GENO: Read and sign.

17 (Whereupon, the proceeding was
18 concluded at 3:40 p.m.)

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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2 I, Bonnie Russo, Court Reporter, the
3 officer before whom the foregoing proceedings
4 were taken, do hereby certify that the
5 foregoing proceedings were taken, do hereby
6 certify that the foregoing transcript is a true
7 and correct record of the proceedings; that
8 said proceedings were taken by me
9 stenographically and thereafter reduced to
10 typewriting under my supervision; and that I am
11 neither counsel for, related to, nor employed
12 by any of the parties to this case and have no
13 interest, financial or otherwise, in its
14 outcome.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand and affixed my notarial seal this ____
17 day of November 2012.

18 My commission expires: May 31, 2015

19 _____

20 NOTARY PUBLIC IN AND FOR THE
21 DISTRICT OF COLUMBIA

22
23
24
25

1 E R R A T A S H E E T

2 IN RE: Maritime Communications

3 RETURN BY: _____

4 PAGE LINE CORRECTION AND REASON

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21 (DATE) (SIGNATURE)

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